

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 96-44, page 4.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 1996, will be 8 percent for overpayments, 9 percent for underpayments, and 11 percent for large corporate underpayments. The rate of interest paid on the portion of a corporation overpayment exceeding \$10,000 is 6.5 percent.

Rev. Proc. 96-46, page 144.

Low-Income Housing Tax Credit. This procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under section 42(h)(3)(D) of the Code for calendar year 1996.

EXEMPT ORGANIZATIONS

Announcement 96-92, page 151.

Beginning September 1, 1996, requests for employee plan determination letters and applications for recognition of tax exemption, formerly sent to key district offices in Atlanta, Georgia, and Baltimore, Maryland, should be sent to the Internal Revenue Service Center in Covington, Kentucky.

Announcement 96-94, page 153.

A list is given of organizations now classified as private foundations. Also, Citizen Policy Research Inc., East Harwich, MA, is now classified as an organization that is not a private operating foundation.

ESTATE TAX

REG-208215-91, page 145.

Proposed regulations relate to the treatment of disclaimers for estate and gift tax purposes.

ADMINISTRATIVE

P.L. 104-134, page 7.

An Act making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for the other purposes, is reproduced.

P.L. 104-168, page 8.

An Act to amend the Internal Revenue Code of 1986, to provide for increased taxpayer protections, is reproduced.

Announcement 96-88, page 150.

Telephone numbers are required on 1996 recipient statements (Forms W-2G, 1098, 1099, and 8308), but the penalty under section 6722 of the Code may be waived if the number is not on the 1996 form.

Announcement 96-93, page 151.

INTL-062-90; INTL-0032-93; INTL-52-86; INTL-52-94, 1996-19 I.R.B. 26, relating to the withholding of income tax under sections 1441 and 1442 on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461, and the related collection, refunds, and credits of withheld tax under sections 1461 through 1463, are corrected.

Finding Lists begin on page 159.

Announcement of Disbarments and Suspensions begins on page 155.

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the

quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semi-annually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents U.S. Government Printing Office, Washington, D.C. 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

26 CFR 1.42-14: Allocation rules for post-1989 State housing credit ceiling amounts.

This procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under section 42(h)(3)(D) of the Code for calendar year 1996. See Rev. Proc. 96-46, page 144.

Section 6621.—Determination of Interest Rate

26 CFR 301.6621-1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 1996, will be 8 percent for overpayments, 9 percent for underpayments, and 11 percent for large corporate underpayments. The rate of interest paid on the portion of a corporation overpayment exceeding \$10,000 is 6.5 percent.

Rev. Rul. 96-44

Section 6621 of the Internal Revenue Code establishes different rates for interest on tax overpayments and interest on tax underpayments. Under § 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 2 percentage points, except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under

§ 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.” See § 6621(c) and § 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable rate. Section 6621(c) and § 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate

based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of July 1996 is 6 percent. Accordingly, an overpayment rate of 8 percent and an underpayment rate of 9 percent are established for the calendar quarter beginning October 1, 1996. The overpayment rate for the portion of corporate overpayments exceeding \$10,000 for the calendar quarter beginning October 1, 1996, is 6.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning October 1, 1996, is 11 percent. These rates apply to amounts bearing interest during that calendar quarter.

Interest factors for daily compound interest for annual rates of 6.5 percent, 8 percent, 9 percent, and 11 percent are published in Tables 66, 69, 71, and 75 of Rev. Proc. 95-17, 1995-1 C.B. 556, 620, 623, 625, and 629.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the accompanying tables.

DRAFTING INFORMATION

The principal author of this revenue ruling is Marcia Rachy of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Ms. Rachy on (202) 622-4940 (not a toll-free call).

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975—PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	DAILY RATE TABLE IN 1995-1 C.B.
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585

TABLE OF INTEREST RATES—Continued

PERIODS BEFORE JUL. 1, 1975—PERIODS ENDING DEC. 31, 1986

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	DAILY RATE TABLE IN 1995–1 C.B.
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25 pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES

FROM JAN. 1, 1987—PRESENT

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE TABLE PG 1995–1 C.B.			RATE TABLE PG 1995–1 C.B.		
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991–PRESENT

		RATE TABLE PG 1995–1 C.B.	
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629

TABLE OF INTEREST RATES FOR CORPORATE OVERPAYMENTS EXCEEDING \$10,000

FROM JANUARY 1, 1995–PRESENT

		RATE TABLE PG 1995–1 C.B.	
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620

Part II. Treaties and Tax Legislation

Subpart B.—Legislation and Related Committee Reports

Public Law 104–134
104th Congress, H.R. 3019¹
April 26, 1996

An Act making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 2904. COMPOSITION OF NATIONAL COMMISSION ON RESTRUCTURING THE INTERNAL REVENUE SERVICE.

(a) **IN GENERAL.**—Section 637(b)(2) of the Treasury, Postal Service, and General Government Appropriations Act, 1996 (Public Law 104–52, 109 Stat. 509) is amended—

(1) by striking “thirteen” and inserting “seventeen”, and

(2) in subparagraphs (B) and (D)—

(A) by striking “Two” and inserting “Four”, and

(B) by striking “one from private life” and inserting “three from private life”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the provisions of the Treasury, Postal Service, and General Government Appropriations Act, 1996.

* * * * *

SEC. 31001. DEBT COLLECTION IMPROVEMENT ACT OF 1996.

* * * * *

(g)(2) **INTERNAL REVENUE CODE OF 1986.**—Subparagraph (A) of section 6103(1)(10) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(1)(10)) is amended by inserting “and to officers and employees of the Department of the Treasury in connection with such reduction” after “6402”.

* * * * *

¹This publication of the law is restricted to excerpts involving tax matters.

(i)(2) **INCLUDED FEDERAL LOAN PROGRAM DEFINED.**—Subparagraph (C) of section 6103(1)(3) of the Internal Revenue Code of 1986 (relating to disclosure that applicant for Federal loan has tax delinquent account) is amended to read as follows:

“(C) **INCLUDED FEDERAL LOAN PROGRAM DEFINED.**—For purposes of this paragraph, the term ‘included Federal loan program’ means any program under which the United States or a Federal agency makes, guarantees, or insures loans.”.

* * * * *

(m)(2) **RETURNS RELATING TO CANCELLATION OF INDEBTEDNESS BY CERTAIN ENTITIES.**—

(A) **IN GENERAL.**—Subsection (a) of section 6050P of the Internal Revenue Code of 1986 (relating to returns relating to the cancellation of indebtedness by certain financial entities) is amended by striking “applicable financial entity” and inserting “applicable entity”.

(B) **ENTITIES TO WHICH REQUIREMENT APPLIES.**—Subsection (c) of section 6050P of such Code is amended—

(i) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively, and inserting before paragraph (2) (as so redesignated) the following new paragraph:

“(1) **APPLICABLE ENTITY.**—The term ‘applicable entity’ means—

“(A) an executive, judicial, or legislative agency (as defined in section 3701(a)(4) of title 31, United States Code), and

“(B) an applicable financial entity.”, and

(ii) in paragraph (3), as so redesignated, by striking “(1)(B)” and inserting “(1)(A) or (2)(B)”.

(C) **ALTERNATIVE PROCEDURE.**—Section 6050P of such Code is amended by adding at the end the following new subsection:

“(e) **ALTERNATIVE PROCEDURE.**—In lieu of making a return

required under subsection (a), an agency described in subsection (c)(1)(A) may submit to the Secretary (at such time and in such form as the Secretary may by regulations prescribe) information sufficient for the Secretary to complete such a return on behalf of such agency. Upon receipt of such information, the Secretary shall complete such return and provide a copy of such return to such agency.”

(D) **CONFORMING AMENDMENTS.**—

(i) Subsection (d) of section 6050P of such Code is amended by striking “applicable financial entity” and inserting “applicable entity”.

(ii) The heading of section 6050P of such Code is amended to read as follows:

“SEC. 6050P. RETURNS RELATING TO THE CANCELLATION OF INDEBTEDNESS BY CERTAIN ENTITIES.”

(iii) The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by striking the item relating to section 6050P and inserting the following new item:

“Section 6050P. Returns relating to the cancellation of indebtedness by certain entities.”

(n) Effective October 1, 1995, section 11 of the Administrative Dispute Resolution Act (Public Law 101–552, U.S.C. 571 note) shall not apply to the amendment made by section 8(b) of such Act.

* * * * *

(u)(2) **FEDERAL AGENCY DEFINED.**—Section 6402(f) of the Internal Revenue Code of 1986 (26 U.S.C. 6402(f)) is amended to read as follows:

“(f) **FEDERAL AGENCY.**—For purposes of this section, the term ‘Federal agency’ means a department, agency or instrumentality of the United States, and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).”.

* * * * *

Approved April 26, 1996.

Public Law 104-168
104th Congress

An Act

July 30, 1996
[H.R. 2337]

To amend the Internal Revenue Code of 1986 to provide for increased taxpayer protections.

Taxpayer Bill of Rights 2.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

26 USC 1 note

(a) **SHORT TITLE.**—This Act may be cited as the “Taxpayer Bill of Rights 2”.

(b) **AMENDMENT OF 1986 CODE.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) **TABLE OF CONTENTS.**—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—TAXPAYER ADVOCATE

Sec. 101. Establishment of position of Taxpayer Advocate within Internal Revenue Service.

Sec. 102. Expansion of authority to issue Taxpayer Assistance Orders.

TITLE II—MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

Sec. 201. Notification of reasons for termination of installment agreements.

Sec. 202. Administrative review of termination of installment agreement.

TITLE III—ABATEMENT OF INTEREST AND PENALTIES

Sec. 301. Expansion of authority to abate interest.

Sec. 302. Review of IRS failure to abate interest.

Sec. 303. Extension of interest-free period for payment of tax after notice and demand.

Sec. 304. Abatement of penalty for failure to make required deposits of payroll taxes in certain cases.

TITLE IV—JOINT RETURNS

Sec. 401. Studies of joint return-related issues.

Sec. 402. Joint return may be made after separate returns without full payment of tax.

Sec. 403. Disclosure of collection activities.

TITLE V—COLLECTION ACTIVITIES

Sec. 501. Modifications to lien and levy provisions.

Sec. 502. Modifications to certain levy exemption amounts.

Sec. 503. Offers-in-compromise.

TITLE VI—INFORMATION RETURNS

Sec. 601. Civil damages for fraudulent filing of information returns.

Sec. 602. Requirement to conduct reasonable investigations of information returns.

TITLE VII—AWARDING OF COSTS AND CERTAIN FEES

- Sec. 701. United States must establish that its position in proceeding was substantially justified.
- Sec. 702. Increased limit on attorney fees.
- Sec. 703. Failure to agree to extension not taken into account.
- Sec. 704. Award of litigation costs permitted in declaratory judgment proceedings.

TITLE VIII—MODIFICATION TO RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS

- Sec. 801. Increase in limit on recovery of civil damages for unauthorized collection actions.
- Sec. 802. Court discretion to reduce award for litigation costs for failure to exhaust administrative remedies.

TITLE IX—MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

- Sec. 901. Preliminary notice requirement.
- Sec. 902. Disclosure of certain information where more than 1 person liable for penalty for failure to collect and pay over tax.
- Sec. 903. Right of contribution where more than 1 person liable for penalty for failure to collect and pay over tax.
- Sec. 904. Volunteer board members of tax-exempt organizations exempt from penalty for failure to collect and pay over tax.

TITLE X—MODIFICATIONS OF RULES RELATING TO SUMMONSES

- Sec. 1001. Enrolled agents included as third-party recordkeepers.
- Sec. 1002. Safeguards relating to designated summonses.
- Sec. 1003. Annual report to Congress concerning designated summonses.

TITLE XI—RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS

- Sec. 1101. Relief from retroactive application of Treasury Department regulations.

TITLE XII—MISCELLANEOUS PROVISIONS

- Sec. 1201. Phone number of person providing payee statements required to be shown on such statement.
- Sec. 1202. Required notice of certain payments.
- Sec. 1203. Unauthorized enticement of information disclosure.
- Sec. 1204. Annual reminders to taxpayers with outstanding delinquent accounts.
- Sec. 1205. 5-year extension of authority for undercover operations.
- Sec. 1206. Disclosure of Form 8300 information on cash transactions.
- Sec. 1207. Disclosure of returns and return information to designee of taxpayer.
- Sec. 1208. Study of netting of interest on overpayments and liabilities.
- Sec. 1209. Expenses of detection of underpayments and fraud, etc.
- Sec. 1210. Use of private delivery services for timely-mailing-as-timely-filing rule.
- Sec. 1211. Reports on misconduct of IRS employees.

TITLE XIII—REVENUE OFFSETS**Subtitle A—Application of Failure-to-Pay Penalty to Substitute Returns**

- Sec. 1301. Application of failure-to-pay penalty to substitute returns.

Subtitle B—Excise Taxes on Amounts of Private Excess Benefits

- Sec. 1311. Excise taxes for failure by certain charitable organizations to meet certain qualification requirements.
- Sec. 1312. Reporting of certain excise taxes and other information.
- Sec. 1313. Exempt organizations required to provide copy of return.
- Sec. 1314. Increase in penalties on exempt organizations for failure to file complete and timely annual returns.

TITLE I—TAXPAYER ADVOCATE**SEC. 101. ESTABLISHMENT OF POSITION OF TAXPAYER ADVOCATE WITHIN INTERNAL REVENUE SERVICE.**

(a) **GENERAL RULE.**—Section 7802 (relating to Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and

Exempt Organizations)) is amended by adding at the end the following new subsection:

Establishment.
Government
organization.

"(d) OFFICE OF TAXPAYER ADVOCATE.—

"(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the 'Office of the Taxpayer Advocate'. Such office shall be under the supervision and direction of an official to be known as the 'Taxpayer Advocate' who shall be appointed by and report directly to the Commissioner of Internal Revenue. The Taxpayer Advocate shall be entitled to compensation at the same rate as the highest level official reporting directly to the Deputy Commissioner of the Internal Revenue Service.

"(2) FUNCTIONS OF OFFICE.—

"(A) IN GENERAL.—It shall be the function of the Office of Taxpayer Advocate to—

"(i) assist taxpayers in resolving problems with the Internal Revenue Service,

"(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

"(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

"(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

"(B) ANNUAL REPORTS.—

"(i) OBJECTIVES.—Not later than June 30 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

"(ii) ACTIVITIES.—Not later than December 31 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

"(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

"(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811,

"(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

"(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

"(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

"(VI) contain an inventory of the items described in subclauses (II) and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

"(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

"(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers,

"(IX) describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and

"(X) include such other information as the Taxpayer Advocate may deem advisable.

"(iii) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subparagraph shall be provided directly to the Committees referred to in clauses (i) and (ii) without any prior review or comment from the Commissioner, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

"(3) RESPONSIBILITIES OF COMMISSIONER.—The Commissioner of Internal Revenue shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate within 3 months after submission to the Commissioner."

(b) CONFORMING AMENDMENTS.—

(1) Section 7811 (relating to Taxpayer Assistance Orders) is amended—

(A) by striking "the Office of Ombudsman" in subsection (a) and inserting "the Office of the Taxpayer Advocate", and

(B) by striking "Ombudsman" each place it appears (including in the headings of subsections (e) and (f)) and inserting "Taxpayer Advocate".

(2) The heading for section 7802 is amended to read as follows:

"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONERS; TAXPAYER ADVOCATE."

(3) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7802 and inserting the following new item:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioners; Taxpayer Advocate."

26 USC 7802
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 102. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.

(a) **TERMS OF ORDERS.**—Subsection (b) of section 7811 (relating to terms of Taxpayer Assistance Orders) is amended—

(1) by inserting "within a specified time period" after "the Secretary", and

(2) by inserting "take any action as permitted by law," after "cease any action,".

(b) **LIMITATION ON AUTHORITY TO MODIFY OR RESCIND.**—Section 7811(c) (relating to authority to modify or rescind) is amended to read as follows:

"(c) **AUTHORITY TO MODIFY OR RESCIND.**—Any Taxpayer Assistance Order issued by the Taxpayer Advocate under this section may be modified or rescinded—

"(1) only by the Taxpayer Advocate, the Commissioner of Internal Revenue, or the Deputy Commissioner of Internal Revenue, and

"(2) only if a written explanation of the reasons for the modification or rescission is provided to the Taxpayer Advocate."

26 USC 7811
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

TITLE II—MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS**SEC. 201. NOTIFICATION OF REASONS FOR TERMINATION OF INSTALLMENT AGREEMENTS.**

(a) **TERMINATIONS.**—Subsection (b) of section 6159 (relating to extent to which agreements remain in effect) is amended by adding at the end the following new paragraph:

"(5) **NOTICE REQUIREMENTS.**—The Secretary may not take any action under paragraph (2), (3), or (4) unless—

"(A) a notice of such action is provided to the taxpayer not later than the day 30 days before the date of such action, and

"(B) such notice includes an explanation why the Secretary intends to take such action.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy."

(b) **CONFORMING AMENDMENT.**—Paragraph (5) of section 6159(b) is amended to read as follows:

"(3) **SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.**—If the Secretary makes a determination that the financial condition

of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date 6 months after the date of the enactment of this Act.

26 USC 6159
note.

SEC. 202. ADMINISTRATIVE REVIEW OF TERMINATION OF INSTALLMENT AGREEMENT.

(a) **GENERAL RULE.**—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by adding at the end the following new subsection:

“(c) **ADMINISTRATIVE REVIEW.**—The Secretary shall establish procedures for an independent administrative review of terminations of installment agreements under this section for taxpayers who request such a review.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on January 1, 1997.

26 USC 6159
note.

TITLE III—ABATEMENT OF INTEREST AND PENALTIES

SEC. 301. EXPANSION OF AUTHORITY TO ABATE INTEREST.

(a) **GENERAL RULE.**—Paragraph (1) of section 6404(e) (relating to abatement of interest in certain cases) is amended—

(1) by inserting “unreasonable” before “error” each place it appears in subparagraphs (A) and (B), and

(2) by striking “in performing a ministerial act” each place it appears and inserting “in performing a ministerial or managerial act”.

(b) **CLERICAL AMENDMENT.**—The subsection heading for subsection (e) of section 6404 is amended—

(1) by striking “ASSESSMENTS” and inserting “ABATEMENT”, and

(2) by inserting “UNREASONABLE” before “ERRORS”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act.

26 USC 6404
note.

SEC. 302. REVIEW OF IRS FAILURE TO ABATE INTEREST.

(a) **IN GENERAL.**—Section 6404 is amended by adding at the end the following new subsection:

“(g) **REVIEW OF DENIAL OF REQUEST FOR ABATEMENT OF INTEREST.**—

“(1) **IN GENERAL.**—The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(iii) to determine whether the Secretary’s failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought within 180 days after the date of the mailing of the Secretary’s final determination not to abate such interest.

Courts.

“(2) **SPECIAL RULES.**—

Applicability.

"(A) DATE OF MAILING.—Rules similar to the rules of section 6213 shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

"(B) RELIEF.—Rules similar to the rules of section 6512(b) shall apply for purposes of this subsection.

"(C) REVIEW.—An order of the Tax Court under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

26 USC 6404
note.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests for abatement after the date of the enactment of this Act.

SEC. 303. EXTENSION OF INTEREST-FREE PERIOD FOR PAYMENT OF TAX AFTER NOTICE AND DEMAND.

(a) GENERAL RULE.—Paragraph (3) of section 6601(e) (relating to payments made within 10 days after notice and demand) is amended to read as follows:

"(3) PAYMENTS MADE WITHIN SPECIFIED PERIOD AFTER NOTICE AND DEMAND.—If notice and demand is made for payment of any amount and if such amount is paid within 21 calendar days (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6601(e)(2) is amended by striking "10 days from the date of notice and demand therefor" and inserting "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000)".

(2) Paragraph (3) of section 6651(a) is amended by striking "10 days of the date of the notice and demand therefor" and inserting "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000)".

26 USC 6601
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any notice and demand given after December 31, 1996.

SEC. 304. ABATEMENT OF PENALTY FOR FAILURE TO MAKE REQUIRED DEPOSITS OF PAYROLL TAXES IN CERTAIN CASES.

(a) IN GENERAL.—Section 6656 (relating to failure to make deposit of taxes) is amended by adding at the end the following new subsections:

"(c) EXCEPTION FOR FIRST-TIME DEPOSITORS OF EMPLOYMENT TAXES.—The Secretary may waive the penalty imposed by subsection (a) on a person's inadvertent failure to deposit any employment tax if—

"(1) such person meets the requirements referred to in section 7430(c)(4)(A)(iii),

"(2) such failure occurs during the 1st quarter that such person was required to deposit any employment tax, and

"(3) the return of such tax was filed on or before the due date.

For purposes of this subsection, the term 'employment taxes' means the taxes imposed by subtitle C.

"(d) AUTHORITY TO ABATE PENALTY WHERE DEPOSIT SENT TO SECRETARY.—The Secretary may abate the penalty imposed by subsection (a) with respect to the first time a depositor is required to make a deposit if the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to deposits required to be made after the date of the enactment of this Act. 26 USC 8656 note.

TITLE IV—JOINT RETURNS

SEC. 401. STUDIES OF JOINT RETURN-RELATED ISSUES.

The Secretary of the Treasury or his delegate and the Comptroller General of the United States shall each conduct separate studies of—

(1) the effects of changing the liability for tax on a joint return from being joint and several to being proportionate to the tax attributable to each spouse,

(2) the effects of providing that, if a divorce decree allocates liability for tax on a joint return filed before the divorce, the Secretary may collect such liability only in accordance with the decree,

(3) whether those provisions of the Internal Revenue Code of 1986 intended to provide relief to innocent spouses provide meaningful relief in all cases where such relief is appropriate, and

(4) the effect of providing that community income (as defined in section 66(d) of such Code) which, in accordance with the rules contained in section 879(a) of such Code, would be treated as the income of one spouse is exempt from a levy for failure to pay any tax imposed by subtitle A by the other spouse for a taxable year ending before their marriage.

The reports of such studies shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate within 6 months after the date of the enactment of this Act. Reports.

SEC. 402. JOINT RETURN MAY BE MADE AFTER SEPARATE RETURNS WITHOUT FULL PAYMENT OF TAX.

(a) GENERAL RULE.—Paragraph (2) of section 6013(b) (relating to limitations on filing of joint return after filing separate returns) is amended by striking subparagraph (A) and redesignating the following subparagraphs accordingly.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act. 26 USC 6013 note.

SEC. 403. DISCLOSURE OF COLLECTION ACTIVITIES.

(a) IN GENERAL.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest) is amended by adding at the end the following new paragraph:

"(5) DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN.—If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals,

26 USC §103
note.

the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected. The preceding sentence shall not apply to any deficiency which may not be collected by reason of section 6502."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

TITLE V—COLLECTION ACTIVITIES

SEC. 501. MODIFICATIONS TO LIEN AND LEVY PROVISIONS.

(a) **WITHDRAWAL OF CERTAIN NOTICES.**—Section 6323 (relating to validity and priority against certain persons) is amended by adding at the end the following new subsection:

"(j) **WITHDRAWAL OF NOTICE IN CERTAIN CIRCUMSTANCES.**—

"(1) **IN GENERAL.**—The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that—

"(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

"(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer.

"(2) **NOTICE TO CREDIT AGENCIES, ETC.**—Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe."

(b) **RETURN OF LEVIED PROPERTY IN CERTAIN CASES.**—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

"(d) **RETURN OF PROPERTY IN CERTAIN CASES.**—If—

"(1) any property has been levied upon, and

"(2) the Secretary determines that—

"(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy

was imposed by means of installment payments, unless such agreement provides otherwise,

“(C) the return of such property will facilitate the collection of the tax liability, or

“(D) with the consent of the taxpayer or the Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c).”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

26 USC 6323
note.

SEC. 502. MODIFICATIONS TO CERTAIN LEVY EXEMPTION AMOUNTS.

(a) **FUEL, ETC.**—Paragraph (2) of section 6334(a) (relating to fuel, provisions, furniture, and personal effects exempt from levy) is amended—

(1) by striking “If the taxpayer is the head of a family, so” and inserting “So”,

(2) by striking “his household” and inserting “the taxpayer’s household”, and

(3) by striking “\$1,650 (\$1,550 in the case of levies issued during 1989)” and inserting “\$2,500”.

(b) **BOOKS, ETC.**—Paragraph (3) of section 6334(a) (relating to books and tools of a trade, business, or profession) is amended by striking “\$1,100 (\$1,050 in the case of levies issued during 1989)” and inserting “\$1,250”.

(c) **INFLATION ADJUSTMENT.**—Section 6334 (relating to property exempt from levy) is amended by adding at the end the following new subsection:

“(f) **INFLATION ADJUSTMENT.**—

“(1) **IN GENERAL.**—In the case of any calendar year beginning after 1997, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting ‘calendar year 1996’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(2) **ROUNDING.**—If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.”

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect with respect to levies issued after December 31, 1996.

26 USC 6334
note.

SEC. 503. OFFERS-IN-COMPROMISE.

(a) **REVIEW REQUIREMENTS.**—Subsection (b) of section 7122 (relating to records) is amended by striking “\$500.” and inserting “\$50,000. However, such compromise shall be subject to continuing quality review by the Secretary.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of the enactment of this Act.

26 USC 7122
note.

TITLE VI—INFORMATION RETURNS

SEC. 601. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

(a) **GENERAL RULE.**—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7484 as section 7435 and by inserting after section 7433 the following new section:

“SEC. 7434. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

“(a) **IN GENERAL.**—If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

“(b) **DAMAGES.**—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of—

“(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

“(2) the costs of the action, and

“(3) in the court's discretion, reasonable attorneys fees.

“(c) **PERIOD FOR BRINGING ACTION.**—Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within the later of—

“(1) 6 years after the date of the filing of the fraudulent information return, or

“(2) 1 year after the date such fraudulent information return would have been discovered by exercise of reasonable care.

“(d) **COPY OF COMPLAINT FILED WITH IRS.**—Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

“(e) **FINDING OF COURT TO INCLUDE CORRECT AMOUNT OF PAYMENT.**—The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

“(f) **INFORMATION RETURN.**—For purposes of this section, the term ‘information return’ means any statement described in section 6724(d)(1)(A).”

(b) **CLERICAL AMENDMENT.**—The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7434 and inserting the following:

“Sec. 7434. Civil damages for fraudulent filing of information returns.

“Sec. 7435. Cross references.”

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to fraudulent information returns filed after the date of the enactment of this Act.

25 USC 7434
note.

SEC. 602. REQUIREMENT TO CONDUCT REASONABLE INVESTIGATIONS OF INFORMATION RETURNS.

(a) **GENERAL RULE.**—Section 6201 (relating to assessment authority) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

“(d) **REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS.**—In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

26 USC 6201
note.

TITLE VII—AWARDING OF COSTS AND CERTAIN FEES**SEC. 701. UNITED STATES MUST ESTABLISH THAT ITS POSITION IN PROCEEDING WAS SUBSTANTIALLY JUSTIFIED.**

(a) **GENERAL RULE.**—Subparagraph (A) of section 7430(c)(4) (defining prevailing party) is amended by striking clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(b) **BURDEN OF PROOF ON UNITED STATES.**—Paragraph (4) of section 7430(c) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) **EXCEPTION IF UNITED STATES ESTABLISHES THAT ITS POSITION WAS SUBSTANTIALLY JUSTIFIED.**—

“(i) **GENERAL RULE.**—A party shall not be treated as the prevailing party in a proceeding to which subsection (a) applies if the United States establishes that the position of the United States in the proceeding was substantially justified.

“(ii) **PRESUMPTION OF NO JUSTIFICATION IF INTERNAL REVENUE SERVICE DID NOT FOLLOW CERTAIN PUBLISHED GUIDANCE.**—For purposes of clause (i), the position of the United States shall be presumed not to be substantially justified if the Internal Revenue Service did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

“(iii) **APPLICABLE PUBLISHED GUIDANCE.**—For purposes of clause (ii), the term ‘applicable published guidance’ means—

“(I) regulations, revenue rulings, revenue procedures, information releases, notices, and announcements, and

“(II) any of the following which are issued to the taxpayer: private letter rulings, technical advice memoranda, and determination letters.”.

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 7430(c)(2) is amended by striking “paragraph (4)(B)” and inserting “paragraph (4)(C)”.

(2) Subparagraph (C) of section 7430(c)(4), as redesignated by subsection (b), is amended by striking “subparagraph (A)” and inserting “this paragraph”.

(3) Sections 6404(g) and 6656(c)(1), as amended by this Act, are each amended by striking “section 7430(c)(4)(A)(iii)” and inserting “section 7430(c)(4)(A)(ii)”.

26 USC 6404
note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

SEC. 702. INCREASED LIMIT ON ATTORNEY FEES.

(a) **IN GENERAL.**—Paragraph (1) of section 7430(c) (defining reasonable litigation costs) is amended—

(1) by striking “\$75” in clause (iii) of subparagraph (B) and inserting “\$110”;

(2) by striking “an increase in the cost of living or” in clause (iii) of subparagraph (B), and

(3) by adding after clause (iii) the following:

“In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting ‘calendar year 1995’ for ‘calendar year 1992’ in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.”.

26 USC 7430
note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

SEC. 703. FAILURE TO AGREE TO EXTENSION NOT TAKEN INTO ACCOUNT.

(a) **IN GENERAL.**—Paragraph (1) of section 7430(b) (relating to requirement that administrative remedies be exhausted) is amended by adding at the end the following new sentence: “Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.”.

26 USC 7430
note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

SEC. 704. AWARD OF LITIGATION COSTS PERMITTED IN DECLARATORY JUDGMENT PROCEEDINGS.

(a) **IN GENERAL.**—Subsection (b) of section 7430 is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

26 USC 7430
note.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

TITLE VIII—MODIFICATION TO RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS

SEC. 801. INCREASE IN LIMIT ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS.

(a) **GENERAL RULE.**—Subsection (b) of section 7433 (relating to damages) is amended by striking “\$100,000” and inserting “\$1,000,000”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

26 USC 7433
note.

SEC. 802. COURT DISCRETION TO REDUCE AWARD FOR LITIGATION COSTS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

(a) **GENERAL RULE.**—Paragraph (1) of section 7433(d) (relating to civil damages for certain unauthorized collection actions) is amended to read as follows:

“(1) **AWARD FOR DAMAGES MAY BE REDUCED IF ADMINISTRATIVE REMEDIES NOT EXHAUSTED.**—The amount of damages awarded under subsection (b) may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

26 USC 7433
note.

TITLE IX—MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

SEC. 901. PRELIMINARY NOTICE REQUIREMENT.

(a) **IN GENERAL.**—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

“(b) **PRELIMINARY NOTICE REQUIREMENT.**—

“(1) **IN GENERAL.**—No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) that the taxpayer shall be subject to an assessment of such penalty.

“(2) **TIMING OF NOTICE.**—The mailing of the notice described in paragraph (1) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

“(3) **STATUTE OF LIMITATIONS.**—If a notice described in paragraph (1) with respect to any penalty is mailed before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the later of—

"(A) the date 90 days after the date on which such notice was mailed, or

"(B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.

"(4) EXCEPTION FOR JEOPARDY.—This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy."

26 USC 6672
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to proposed assessments made after June 30, 1996.

SEC. 902. DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.

(a) IN GENERAL.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest), as amended by section 403, is amended by adding at the end the following new paragraph:

"(9) DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY UNDER SECTION 6672.—If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person—

"(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and

"(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected."

26 USC 6103
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 903. RIGHT OF CONTRIBUTION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.

(a) IN GENERAL.—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by adding at the end the following new subsection:

"(d) RIGHT OF CONTRIBUTION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY.—If more than 1 person is liable for the penalty under subsection (a) with respect to any tax, each person who paid such penalty shall be entitled to recover from other persons who are liable for such penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined or consolidated with—

"(1) an action for collection of such penalty brought by the United States, or

"(2) a proceeding in which the United States files a counterclaim or third-party complaint for the collection of such penalty."

26 USC 6672
note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 904. VOLUNTEER BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS EXEMPT FROM PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.

(a) **IN GENERAL.**—Section 6672 is amended by adding at the end the following new subsection:

“(e) **EXCEPTION FOR VOLUNTARY BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS.**—No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under subtitle A if such member—

“(1) is solely serving in an honorary capacity,

“(2) does not participate in the day-to-day or financial operations of the organization, and

“(3) does not have actual knowledge of the failure on which such penalty is imposed.

The preceding sentence shall not apply if it results in no person being liable for the penalty imposed by subsection (a).”.

(b) **PUBLIC INFORMATION REQUIREMENTS.**—

28 USC 6672
note.

(1) **IN GENERAL.**—The Secretary of the Treasury or the Secretary's delegate (hereafter in this subsection referred to as the “Secretary”) shall take such actions as may be appropriate to ensure that employees are aware of their responsibilities under the Federal tax depository system, the circumstances under which employees may be liable for the penalty imposed by section 6672 of the Internal Revenue Code of 1986, and the responsibility to promptly report to the Internal Revenue Service any failure referred to in subsection (a) of such section 6672. Such actions shall include—

(A) printing of a warning on deposit coupon booklets and the appropriate tax returns that certain employees may be liable for the penalty imposed by such section 6672, and

(B) the development of a special information packet.

(2) **DEVELOPMENT OF EXPLANATORY MATERIALS.**—The Secretary shall develop materials explaining the circumstances under which board members of tax-exempt organizations (including voluntary and honorary members) may be subject to penalty under section 6672 of such Code. Such materials shall be made available to tax-exempt organizations.

(3) **IRS INSTRUCTIONS.**—The Secretary shall clarify the instructions to Internal Revenue Service employees on the application of the penalty under section 6672 of such Code with regard to voluntary members of boards of trustees or directors of tax-exempt organizations.

TITLE X—MODIFICATIONS OF RULES RELATING TO SUMMONSES

SEC. 1001. ENROLLED AGENTS INCLUDED AS THIRD-PARTY RECORD-KEEPERS.

(a) **IN GENERAL.**—Paragraph (3) of section 7609(a) (relating to third-party recordkeeper defined) is amended by striking “and” at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting “; and”, and by adding at the end the following the subparagraph:

26 USC 7609
note.

“(I) any enrolled agent.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to summonses issued after the date of the enactment of this Act.

SEC. 1002. SAFEGUARDS RELATING TO DESIGNATED SUMMONSES.

(a) **STANDARD OF REVIEW.**—Subparagraph (A) of section 6503(k)(2) (defining designated summons) is amended by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively, and by inserting before clause (ii) (as so redesignated) the following new clause:

“(i) the issuance of such summons is preceded by a review of such issuance by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted.”

(b) **LIMITATION ON PERSONS TO WHOM DESIGNATED SUMMONS MAY BE ISSUED.**—Paragraph (1) of section 6503(k) is amended by striking “with respect to any return of tax by a corporation” and inserting “to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable year (or other period) for which such corporation is being examined under the coordinated examination program (or any successor program) of the Internal Revenue Service”.

(c) **CLERICAL AMENDMENT.**—Section 6503 is amended by redesignating subsections (k) and (l) (as amended by this section) as subsections (j) and (k), respectively.

26 USC 6503
note.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to summonses issued after the date of the enactment of this Act.

26 USC 6503
note.

SEC. 1003. ANNUAL REPORT TO CONGRESS CONCERNING DESIGNATED SUMMONSES.

Not later than December 31 of each calendar year after 1995, the Secretary of the Treasury or his delegate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the number of designated summonses (as defined in section 6503(j) of the Internal Revenue Code of 1986) which were issued during the preceding 12 months.

TITLE XI—RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS

SEC. 1101. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS.

(a) **IN GENERAL.**—Subsection (b) of section 7805 (relating to rules and regulations) is amended to read as follows:

“(b) **RETROACTIVITY OF REGULATIONS.**—

“(1) **IN GENERAL.**—Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

"(A) The date on which such regulation is filed with the Federal Register.

"(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

"(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

"(2) EXCEPTION FOR PROMPTLY ISSUED REGULATIONS.—Paragraph (1) shall not apply to regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which the regulation relates.

"(3) PREVENTION OF ABUSE.—The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

"(4) CORRECTION OF PROCEDURAL DEFECTS.—The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

"(5) INTERNAL REGULATIONS.—The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

"(6) CONGRESSIONAL AUTHORIZATION.—The limitation of paragraph (1) may be superseded by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

"(7) ELECTION TO APPLY RETROACTIVELY.—The Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

"(8) APPLICATION TO RULINGS.—The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to regulations which relate to statutory provisions enacted on or after the date of the enactment of this Act.

26 USC 7805
note.

TITLE XII—MISCELLANEOUS PROVISIONS

SEC. 1201. PHONE NUMBER OF PERSON PROVIDING PAYEE STATEMENTS REQUIRED TO BE SHOWN ON SUCH STATEMENT.

(a) GENERAL RULE.—The following provisions are each amended by striking "name and address" and inserting "name, address, and phone number of the information contact":

- (1) Section 6041(d)(1).
- (2) Section 6041A(e)(1).
- (3) Section 6042(c)(1).
- (4) Section 6044(e)(1).
- (5) Section 6048(b)(1).
- (6) Section 6049(c)(1)(A).
- (7) Section 6050B(b)(1).
- (8) Section 6050H(d)(1).
- (9) Section 6050I(e)(1).

- (10) Section 6050J(e).
- (11) Section 6050K(b)(1).
- (12) Section 6050N(b)(1).

26 USC 6041
note.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to statements required to be furnished after December 31, 1996 (determined without regard to any extension).

26 USC 6311
note.

SEC. 1202. REQUIRED NOTICE OF CERTAIN PAYMENTS.

If any payment is received by the Secretary of the Treasury or his delegate from any taxpayer and the Secretary cannot associate such payment with such taxpayer, the Secretary shall make reasonable efforts to notify the taxpayer of such inability within 60 days after the receipt of such payment.

SEC. 1203. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

(a) **IN GENERAL.**—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties), as amended by section 601(a), is amended by redesignating section 7435 as section 7436 and by inserting after section 7434 the following new section:

“SEC. 7435. CIVIL DAMAGES FOR UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

“(a) **IN GENERAL.**—If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

“(b) **DAMAGES.**—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$500,000 or the sum of—

- “(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and
- “(2) the costs of the action.

Damages shall not include the taxpayer's liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

“(c) **PAYMENT AUTHORITY.**—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

“(d) **PERIOD FOR BRINGING ACTION.**—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

“(e) **MANDATORY STAY.**—Upon a certification by the Commissioner or the Commissioner's delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

“(f) CRIME-FRAUD EXCEPTION.—Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime.”.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76, as amended by section 601(b), is amended by striking the item relating to section 7435 and by adding at the end the following new items:

“Sec. 7435. Civil damages for unauthorized enticement of information disclosure.
“Sec. 7436. Cross references.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to actions after the date of the enactment of this Act. 26 USC 7436 note.

SEC. 1204. ANNUAL REMINDERS TO TAXPAYERS WITH OUTSTANDING DELINQUENT ACCOUNTS.

(a) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

“SEC. 7524. ANNUAL NOTICE OF TAX DELINQUENCY.

“Not less often than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

“Sec. 7524. Annual notice of tax delinquency.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years after 1996. 26 USC 7524 note.

SEC. 1205. 5-YEAR EXTENSION OF AUTHORITY FOR UNDERCOVER OPERATIONS.

(a) IN GENERAL.—Paragraph (3) of section 7601(c) of the Anti-Drug Abuse Act of 1988 is amended by striking all that follows “this Act” and inserting a period.

(b) RESTORATION OF AUTHORITY FOR 5 YEARS.—Subsection (c) of section 7608 is amended by adding at the end the following new paragraph:

“(6) APPLICATION OF SECTION.—The provisions of this subsection—

“(A) shall apply after November 17, 1988, and before January 1, 1990, and

“(B) shall apply after the date of the enactment of this paragraph and before January 1, 2001.

All amounts expended pursuant to this subsection during the period described in subparagraph (B) shall be recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before January 1, 2001.”.

(c) ENHANCED OVERSIGHT.—

(1) ADDITIONAL INFORMATION REQUIRED IN REPORTS TO CONGRESS.—Subparagraph (B) of section 7608(c)(4) is amended—

(A) by striking “preceding the period” in clause (ii),

(B) by striking “and” at the end of clause (ii), and

(C) by striking clause (iii) and inserting the following:

“(iii) the number, by programs, of undercover investigative operations closed in the 1-year period for which such report is submitted, and

“(iv) the following information with respect to each undercover investigative operation pending as of the

end of the 1-year period for which such report is submitted or closed during such 1-year period—

“(I) the date the operation began and the date of the certification referred to in the last sentence of paragraph (1),

“(II) the total expenditures under the operation and the amount and use of the proceeds from the operation,

“(III) a detailed description of the operation including the potential violation being investigated and whether the operation is being conducted under grand jury auspices, and

“(IV) the results of the operation including the results of criminal proceedings.”

(2) AUDITS REQUIRED WITHOUT REGARD TO AMOUNTS INVOLVED.—Subparagraph (C) of section 7608(c)(5) is amended to read as follows:

“(C) UNDERCOVER INVESTIGATIVE OPERATION.—The term ‘undercover investigative operation’ means any undercover investigative operation of the Service; except that, for purposes of subparagraphs (A) and (C) of paragraph (4), such term only includes an operation which is exempt from section 3302 or 9102 of title 31, United States Code.”

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

26 USC 7608
note.

SEC. 1206. DISCLOSURE OF FORM 8300 INFORMATION ON CASH TRANSACTIONS.

(a) IN GENERAL.—Subsection (I) of section 6103 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

“(15) DISCLOSURE OF RETURNS FILED UNDER SECTION 80501.—The Secretary may, upon written request, disclose to officers and employees of—

“(A) any Federal agency,

“(B) any agency of a State or local government, or

“(C) any agency of the government of a foreign country, information contained on returns filed under section 80501. Any such disclosure shall be made on the same basis, and subject to the same conditions, as apply to disclosures of information on reports filed under section 5313 of title 31, United States Code; except that no disclosure under this paragraph shall be made for purposes of the administration of any tax law.”

(b) CONFORMING AMENDMENTS.—

(1) Subsection (i) of section 6103 is amended by striking paragraph (8).

(2) Subparagraph (A) of section 6103(p)(3) is amended—

(A) by striking “(7)(A)(ii), or (8)” and inserting “or (7)(A)(ii)”, and

(B) by striking “or (14)” and inserting “(14), or (15)”.

(3) The material preceding subparagraph (A) of section 6103(p)(4) is amended—

(A) by striking “(5), or (8)” and inserting “or (5)”,

(B) by striking “(i)(3)(B)(i), or (8)” and inserting “(i)(3)(B)(i),” and

(C) by striking “or (12)” and inserting “(12), or (15)”.

(4) Clause (ii) of section 6103(p)(4)(F) is amended—

(A) by striking “(5), or (8)” and inserting “or (5), and

(B) by striking “or (14)” and inserting “(14), or (15)”.

(5) Paragraph (2) of section 7218(a) is amended by striking “or (12)” and inserting “(12), or (15)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

26 USC 6103
note.

**SEC. 1207. DISCLOSURE OF RETURNS AND RETURN INFORMATION TO
DESIGNEE OF TAXPAYER.**

Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended by striking “written request for or consent to such disclosure” and inserting “request for or consent to such disclosure”.

**SEC. 1208. STUDY OF NETTING OF INTEREST ON OVERPAYMENTS AND
LIABILITIES.**

(a) **IN GENERAL.**—The Secretary of the Treasury or his delegate shall—

(1) conduct a study of the manner in which the Internal Revenue Service has implemented the netting of interest on overpayments and underpayments and of the policy and administrative implications of global netting, and

(2) before submitting the report of such study, hold a public hearing to receive comments on the matters included in such study.

(b) **REPORT.**—The report of such study shall be submitted not later than 6 months after the date of the enactment of this Act to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

**SEC. 1209. EXPENSES OF DETECTION OF UNDERPAYMENTS AND
FRAUD, ETC.**

(a) **IN GENERAL.**—Section 7623 (relating to expenses of deduction and punishment of frauds) is amended to read as follows:

**“SEC. 7623. EXPENSES OF DETECTION OF UNDERPAYMENTS AND
FRAUD, ETC.**

“The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for—

Regulations.

“(1) detecting underpayments of tax, and

“(2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,

in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts (other than interest) collected by reason of the information provided, and any amount so collected shall be available for such payments.”.

(b) **CLERICAL AMENDMENT.**—The table of sections for subchapter B of chapter 78 is amended by striking the item relating to section 7623 and inserting the following new item:

"Sec. 7623. Expenses of detection of underpayments and fraud, etc."

26 USC 7623
note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date which is 6 months after the date of the enactment of this Act.

26 USC 7623
note.

(d) **REPORT.**—The Secretary of the Treasury or his delegate shall submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the payments under section 7623 of the Internal Revenue Code of 1986 during the year and on the amounts collected for which such payments were made.

SEC. 1210. USE OF PRIVATE DELIVERY SERVICES FOR TIMELY-MAILING-AS-TIMELY-FILEING RULE.

Section 7502 (relating to timely mailing treated as timely filing and paying) is amended by adding at the end the following new subsection:

"(f) **TREATMENT OF PRIVATE DELIVERY SERVICES.**—

"(1) **IN GENERAL.**—Any reference in this section to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked as described in paragraph (2)(C) by any designated delivery service.

"(2) **DESIGNATED DELIVERY SERVICE.**—For purposes of this subsection, the term 'designated delivery service' means any delivery service provided by a trade or business if such service is designated by the Secretary for purposes of this section. The Secretary may designate a delivery service under the preceding sentence only if the Secretary determines that such service—

"(A) is available to the general public,

"(B) is at least as timely and reliable on a regular basis as the United States mail,

"(C) records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item referred to in this section is to be delivered, the date on which such item was given to such trade or business for delivery, and

"(D) meets such other criteria as the Secretary may prescribe.

"(3) **EQUIVALENTS OF REGISTERED AND CERTIFIED MAIL.**—The Secretary may provide a rule similar to the rule of paragraph (1) with respect to any service provided by a designated delivery service which is substantially equivalent to United States registered or certified mail."

26 USC 7803
note.

SEC. 1211. REPORTS ON MISCONDUCT OF IRS EMPLOYEES.

On or before June 1 of each calendar year after 1996, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

(1) all categories of instances involving the misconduct of employees of the Internal Revenue Service during the preceding calendar year, and

(2) the disposition during the preceding calendar year of any such instances (without regard to the year of the misconduct).

TITLE XIII—REVENUE OFFSETS

Subtitle A—Application of Failure-to-Pay Penalty to Substitute Returns

SEC. 1301. APPLICATION OF FAILURE-TO-PAY PENALTY TO SUBSTITUTE RETURNS.

(a) **GENERAL RULE.**—Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

“(g) **TREATMENT OF RETURNS PREPARED BY SECRETARY UNDER SECTION 6020(b).**—In the case of any return made by the Secretary under section 6020(b)—

“(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

“(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a).”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply in the case of any return the due date for which (determined without regard to extensions) is after the date of the enactment of this Act.

26 USC 6651
note.

Subtitle B—Excise Taxes on Amounts of Private Excess Benefits

SEC. 1311. EXCISE TAXES FOR FAILURE BY CERTAIN CHARITABLE ORGANIZATIONS TO MEET CERTAIN QUALIFICATION REQUIREMENTS.

(a) **IN GENERAL.**—Chapter 42 (relating to private foundations and certain other tax-exempt organizations) is amended by redesignating subchapter D as subchapter E and by inserting after subchapter C the following new subchapter:

“Subchapter D—Failure by Certain Charitable Organizations To Meet Certain Qualification Requirements

“Sec. 4958. Taxes on excess benefit transactions.

“SEC. 4958. TAXES ON EXCESS BENEFIT TRANSACTIONS.

“(a) **INITIAL TAXES.**—

“(1) **ON THE DISQUALIFIED PERSON.**—There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

"(2) ON THE MANAGEMENT.—In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

"(b) ADDITIONAL TAX ON THE DISQUALIFIED PERSON.—In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

"(c) EXCESS BENEFIT TRANSACTION; EXCESS BENEFIT.—For purposes of this section—

"(1) EXCESS BENEFIT TRANSACTION.—

"(A) IN GENERAL.—The term 'excess benefit transaction' means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

"(B) EXCESS BENEFIT.—The term 'excess benefit' means the excess referred to in subparagraph (A).

"(2) AUTHORITY TO INCLUDE CERTAIN OTHER PRIVATE INUREMENT.—To the extent provided in regulations prescribed by the Secretary, the term 'excess benefit transaction' includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

"(2) LIMIT FOR MANAGEMENT.—With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000.

"(e) APPLICABLE TAX-EXEMPT ORGANIZATION.—For purposes of this subchapter, the term 'applicable tax-exempt organization' means—

"(1) any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), and

"(2) any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.

Such term shall not include a private foundation (as defined in section 509(a)).

"(f) OTHER DEFINITIONS.—For purposes of this section—

"(1) DISQUALIFIED PERSON.—The term 'disqualified person' means, with respect to any transaction—

"(A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization,

"(B) a member of the family of an individual described in subparagraph (A), and

"(C) a 35-percent controlled entity.

"(2) ORGANIZATION MANAGER.—The term 'organization manager' means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

"(3) 35-PERCENT CONTROLLED ENTITY.—

"(A) IN GENERAL.—The term '35-percent controlled entity' means—

"(i) a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,

"(ii) a partnership in which such persons own more than 35 percent of the profits interest, and

"(iii) a trust or estate in which such persons own more than 35 percent of the beneficial interest.

"(B) CONSTRUCTIVE OWNERSHIP RULES.—Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.

"(4) FAMILY MEMBERS.—The members of an individual's family shall be determined under section 4946(d); except that such members also shall include the brothers and sisters (whether by the whole or half blood) of the individual and their spouses.

"(5) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of—

"(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

"(B) the date on which the tax imposed by subsection (a)(1) is assessed.

"(6) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards."

(b) APPLICATION OF PRIVATE INUREMENT RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—

(1) IN GENERAL.—Paragraph (4) of section 501(c) is amended by inserting “(A)” after “(4)” and by adding at the end the following:

“(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.”.

26 USC 501 note.

(2) SPECIAL RULE FOR CERTAIN COOPERATIVES.—In the case of an organization operating on a cooperative basis which, before the date of the enactment of this Act, was determined by the Secretary of the Treasury or his delegate, to be described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, the allocation or return of net margins or capital to the members of such organization in accordance with its incorporating statute and bylaws shall not be treated for purposes of such Code as the inurement of the net earnings of such organization to the benefit of any private shareholder or individual. The preceding sentence shall apply only if such statute and bylaws are substantially as such statute and bylaws were in existence on the date of the enactment of this Act.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4955 is amended—

(A) by striking “SECTION 4945” in the heading and inserting “SECTIONS 4945 AND 4958”, and

(B) by inserting before the period “or an excess benefit for purposes of section 4958”.

(2) Subsections (a), (b), and (c) of section 4963 are each amended by inserting “4958,” after “4955,”.

(3) Subsection (e) of section 6213 is amended by inserting “4958 (relating to private excess benefit),” before “4971”.

(4) Paragraphs (2) and (3) of section 7422(g) are each amended by inserting “4958,” after “4955,”.

(5) Subsection (b) of section 7454 is amended by inserting “or whether an organization manager (as defined in section 4958(f)(2)) has ‘knowingly’ participated in an excess benefit transaction (as defined in section 4958(c)),” after “section 4912(b),”.

(6) The table of subchapters for chapter 42 is amended by striking the last item and inserting the following:

“SUBCHAPTER D. Failure by certain charitable organizations to meet certain qualification requirements.

“SUBCHAPTER E. Abatement of first and second tier taxes in certain cases.”.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section (other than subsection (b)) shall apply to excess benefit transactions occurring on or after September 14, 1995.

(2) BINDING CONTRACTS.—The amendments referred to in paragraph (1) shall not apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.

(3) APPLICATION OF PRIVATE INUREMENT RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—

(A) IN GENERAL.—The amendment made by subsection (b) shall apply to inurement occurring on or after September 14, 1995.

26 USC 4955
note.

26 USC 4965
note.

26 USC 501 note.

(B) **BINDING CONTRACTS.**—The amendment made by subsection (b) shall not apply to any inurement occurring before January 1, 1997, pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such inurement occurred.

SEC. 1312. REPORTING OF CERTAIN EXCISE TAXES AND OTHER INFORMATION.

(a) **REPORTING BY ORGANIZATIONS DESCRIBED IN SECTION 501(c)(3).**—Subsection (b) of section 6033 (relating to certain organizations described in section 501(c)(3)) is amended by striking “and” at the end of paragraph (9), by redesignating paragraph (10) as paragraph (14), and by inserting after paragraph (9) the following new paragraphs:

“(10) the respective amounts (if any) of the taxes paid by the organization during the taxable year under the following provisions:

“(A) section 4911 (relating to tax on excess expenditures to influence legislation),

“(B) section 4912 (relating to tax on disqualifying lobbying expenditures of certain organizations), and

“(C) section 4955 (relating to taxes on political expenditures of section 501(c)(3) organizations),

“(11) the respective amounts (if any) of the taxes paid by the organization, or any disqualified person with respect to such organization, during the taxable year under section 4958 (relating to taxes on private excess benefit from certain charitable organizations),

“(12) such information as the Secretary may require with respect to any excess benefit transaction (as defined in section 4958),

“(13) such information with respect to disqualified persons as the Secretary may prescribe, and”.

(b) **ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).**—Section 6033 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) **CERTAIN ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).**—Every organization described in section 501(c)(4) which is subject to the requirements of subsection (a) shall include on the return required under subsection (a) the information referred to in paragraphs (11), (12) and (13) of subsection (b) with respect to such organization.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to returns for taxable years beginning after the date of the enactment of this Act. 26 USC 6033 note.

SEC. 1313. EXEMPT ORGANIZATIONS REQUIRED TO PROVIDE COPY OF RETURN.

(a) **REQUIREMENT TO PROVIDE COPY.**—

(1) Subparagraph (A) of section 6104(e)(1) (relating to public inspection of annual returns) is amended to read as follows:

“(A) **IN GENERAL.**—During the 3-year period beginning on the filing date—

“(i) a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at

the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

“(ii) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The request described in clause (ii) must be made in person or in writing. If the request under clause (ii) is made in person, such copy shall be provided immediately and, if made in writing, shall be provided within 30 days.”.

(2) Clause (ii) of section 6104(e)(2)(A) is amended by inserting before the period at the end the following: “(and, upon request of an individual made at such principal office or such a regional or district office, a copy of the material requested to be available for inspection under this subparagraph shall be provided (in accordance with the last sentence of paragraph (1)(A)) to such individual without charge other than reasonable fee for any reproduction and mailing costs)”.

(3) Subsection (e) of section 6104 is amended by adding at the end the following new paragraph:

“(3) LIMITATION.—Paragraph (1)(A)(ii) (and the corresponding provision of paragraph (2)) shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available, or, the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest.”.

(b) INCREASE IN PENALTY FOR WILLFUL FAILURE TO ALLOW PUBLIC INSPECTION OF CERTAIN RETURNS, ETC.—Section 6685 is amended by striking “\$1,000” and inserting “\$5,000”.

26 USC 6104
note.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made on or after the 60th day after the Secretary of the Treasury first issues the regulations referred to section 6104(e)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)(3)).

SEC. 1814. INCREASE IN PENALTIES ON EXEMPT ORGANIZATIONS FOR FAILURE TO FILE COMPLETE AND TIMELY ANNUAL RETURNS.

(a) IN GENERAL.—Subparagraph (A) of section 6652(c)(1) (relating to annual returns under section 6033) is amended by striking “\$10” and inserting “\$20” and by striking “\$5,000” and inserting “\$10,000”.

(b) LARGER PENALTY ON ORGANIZATIONS HAVING GROSS RECEIPTS IN EXCESS OF \$1,000,000.—Subparagraph (A) of section 6652(c)(1) is amended by adding at the end the following new sentence: “In the case of an organization having gross receipts exceeding \$1,000,000 for any year, with respect to the return required under section 6033 for such year, the first sentence of this subparagraph shall be applied by substituting ‘\$100’ for ‘\$20’ and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed \$50,000.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns for taxable years ending on or after the date of the enactment of this Act. 26 USC 6652 note.

Approved July 30, 1996.

LEGISLATIVE HISTORY—H.R. 2337:

HOUSE REPORTS: No. 104-506 (Comm. on Ways and Means).

CONGRESSIONAL RECORD, Vol. 142 (1996):

Apr. 16, considered and passed House.

July 11, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996):

July 30, Presidential remarks.



TAXPAYER BILL OF RIGHTS 2

MARCH 28, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means,
submitted the following

R E P O R T

[To accompany H.R. 2337]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2337) to amend the Internal Revenue Code of 1986 to provide for increased taxpayer protections, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Taxpayer Bill of Rights 2".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—TAXPAYER ADVOCATE

Sec. 101. Establishment of position of Taxpayer Advocate within Internal Revenue Service.
Sec. 102. Expansion of authority to issue Taxpayer Assistance Orders.

TITLE II—MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

Sec. 201. Notification of reasons for termination of installment agreements.
Sec. 202. Administrative review of termination of installment agreement.

TITLE III—ABATEMENT OF INTEREST AND PENALTIES

Sec. 301. Expansion of authority to abate interest.
Sec. 302. Review of IRS failure to abate interest.
Sec. 303. Extension of interest-free period for payment of tax after notice and demand.
Sec. 304. Abatement of penalty for failure to make required deposits of payroll taxes in certain cases.

TITLE IV—JOINT RETURNS

Sec. 401. Studies of joint return-related issues.
Sec. 402. Joint return may be made after separate returns without full payment of tax.
Sec. 403. Disclosure of collection activities.

TITLE V—COLLECTION ACTIVITIES

Sec. 501. Modifications to lien and levy provisions.
Sec. 502. Modifications to certain levy exemption amounts.
Sec. 503. Offers-in-compromise.

TITLE VI—INFORMATION RETURNS

Sec. 601. Civil damages for fraudulent filing of information returns.
Sec. 602. Requirement to conduct reasonable investigations of information returns.

TITLE VII—AWARDING OF COSTS AND CERTAIN FEES

Sec. 701. United States must establish that its position in proceeding was substantially justified.
Sec. 702. Increased limit on attorney fees.
Sec. 703. Failure to agree to extension not taken into account.
Sec. 704. Award of litigation costs permitted in declaratory judgment proceedings.

TITLE VIII—MODIFICATION TO RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS

Sec. 801. Increase in limit on recovery of civil damages for unauthorized collection actions.
Sec. 802. Court discretion to reduce award for litigation costs for failure to exhaust administrative remedies.

TITLE IX—MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

Sec. 901. Preliminary notice requirement.
Sec. 902. Disclosure of certain information where more than 1 person liable for penalty for failure to collect and pay over tax.
Sec. 903. Right of contribution where more than 1 person liable for penalty for failure to collect and pay over tax.
Sec. 904. Volunteer board members of tax-exempt organizations exempt from penalty for failure to collect and pay over tax.

TITLE X—MODIFICATIONS OF RULES RELATING TO SUMMONSES

- Sec. 1001. Ranked agents included as third-party recordkeepers.
 Sec. 1002. Safeguards relating to designated summonses.
 Sec. 1003. Annual report to Congress concerning designated summonses.

TITLE XI—RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS

- Sec. 1101. Relief from retroactive application of Treasury Department regulations.

TITLE XII—MISCELLANEOUS PROVISIONS

- Sec. 1201. Phone number of person providing payee statements required to be shown on such statement.
 Sec. 1202. Required notice of certain payments.
 Sec. 1203. Unauthorized enticement of information disclosure.
 Sec. 1204. Annual reminders to taxpayers with outstanding delinquent accounts.
 Sec. 1205. 5-year extension of authority for undercover operations.
 Sec. 1206. Disclosure of Form 8300 information on cash transactions.
 Sec. 1207. Disclosure of returns and return information to designee of taxpayer.
 Sec. 1208. Study of netting of interest on overpayments and liabilities.
 Sec. 1209. Responses of detection of underpayments and fraud, etc.
 Sec. 1210. Use of private delivery services for timely-mailing-as-timely-filing rule.
 Sec. 1211. Reports on misconduct of IRS employees.

TITLE XIII—REVENUE OFFSETS

Subtitle A—Application of Failure-to Pay Penalty to Substitute Returns

- Sec. 1301. Application of failure to pay penalty to substitute returns.

Subtitle B—Excise Taxes on Amounts of Private Excess Benefits

- Sec. 1311. Excise taxes for failure by certain charitable organizations to meet certain qualification requirements.
 Sec. 1312. Reporting of certain excise taxes and other information.
 Sec. 1313. Exempt organizations required to provide copy of return.
 Sec. 1314. Increase in penalties on exempt organizations for failure to file complete and timely annual returns.

TITLE I—TAXPAYER ADVOCATE

SEC. 101. ESTABLISHMENT OF POSITION OF TAXPAYER ADVOCATE WITHIN INTERNAL REVENUE SERVICE.

(a) GENERAL RULE.—Section 7802 (relating to Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations)) is amended by adding at the end the following new subsection:

“(d) OFFICE OF TAXPAYER ADVOCATE.—

“(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the ‘Office of the Taxpayer Advocate’. Such office shall be under the supervision and direction of an official to be known as the ‘Taxpayer Advocate’ who shall be appointed by and report directly to the Commissioner of Internal Revenue. The Taxpayer Advocate shall be entitled to compensation at the same rate as the highest level official reporting directly to the Deputy Commissioner of the Internal Revenue Service.

“(2) FUNCTIONS OF OFFICE.—

“(A) IN GENERAL.—It shall be the function of the Office of Taxpayer Advocate to—

“(i) assist taxpayers in resolving problems with the Internal Revenue Service,

“(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

“(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

“(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

“(B) ANNUAL REPORTS.—

“(i) OBJECTIVES.—Not later than June 30 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

“(ii) ACTIVITIES.—Not later than December 31 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such re-

port shall contain full and substantive analysis, in addition to statistical information, and shall—

"(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

"(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811,

"(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

"(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

"(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

"(VI) contain an inventory of the items described in subclauses (II) and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

"(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

"(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers,

"(IX) describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and

"(X) include such other information as the Taxpayer Advocate may deem advisable.

"(iii) **REPORT TO BE SUBMITTED DIRECTLY.**—Each report required under this subparagraph shall be provided directly to the Committees referred to in clauses (i) and (ii) without any prior review or comment from the Commissioner, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

"(3) **RESPONSIBILITIES OF COMMISSIONER.**—The Commissioner of Internal Revenue shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate within 3 months after submission to the Commissioner."

(b) **CONFORMING AMENDMENTS.**—

(1) Section 7811 (relating to Taxpayer Assistance Orders) is amended—

(A) by striking "the Office of Ombudsman" in subsection (a) and inserting "the Office of the Taxpayer Advocate", and

(B) by striking "Ombudsman" each place it appears (including in the headings of subsections (e) and (f)) and inserting "Taxpayer Advocate".

(2) The heading for section 7802 is amended to read as follows:

"SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONERS; TAXPAYER ADVOCATE."

(3) The table of sections for subchapter A of chapter 80 is amended by striking the item relating to section 7802 and inserting the following new item:

"Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioners; Taxpayer Advocate."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 102. EXPANSION OF AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS.

(a) **TERMS OF ORDERS.**—Subsection (b) of section 7811 (relating to terms of Taxpayer Assistance Orders) is amended—

(1) by inserting "within a specified time period" after "the Secretary", and

(2) by inserting "take any action as permitted by law," after "cease any action."

(b) **LIMITATION ON AUTHORITY TO MODIFY OR RESCIND.**—Section 7811(c) (relating to authority to modify or rescind) is amended to read as follows:

"(c) **AUTHORITY TO MODIFY OR RESCIND.**—Any Taxpayer Assistance Order issued by the Taxpayer Advocate under this section may be modified or rescinded—

"(1) only by the Taxpayer Advocate, the Commissioner of Internal Revenue, or the Deputy Commissioner of Internal Revenue, and

"(2) only if a written explanation of the reasons for the modification or rescission is provided to the Taxpayer Advocate."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

TITLE II—MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

SEC. 201. NOTIFICATION OF REASONS FOR TERMINATION OF INSTALLMENT AGREEMENTS.

(a) **TERMINATIONS.**—Subsection (b) of section 6159 (relating to extent to which agreements remain in effect) is amended by adding at the end the following new paragraph:

"(5) **NOTICE REQUIREMENTS.**—The Secretary may not take any action under paragraph (2), (3), or (4) unless—

"(A) a notice of such action is provided to the taxpayer not later than the day 30 days before the date of such action, and

"(B) such notice includes an explanation why the Secretary intends to take such action.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy."

(b) **CONFORMING AMENDMENT.**—Paragraph (3) of section 6159(b) is amended to read as follows:

"(3) **SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.**—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date 6 months after the date of the enactment of this Act.

SEC. 202. ADMINISTRATIVE REVIEW OF TERMINATION OF INSTALLMENT AGREEMENT.

(a) **GENERAL RULE.**—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by adding at the end the following new subsection:

"(c) **ADMINISTRATIVE REVIEW.**—The Secretary shall establish procedures for an independent administrative review of terminations of installment agreements under this section for taxpayers who request such a review."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on January 1, 1997.

TITLE III—ABATEMENT OF INTEREST AND PENALTIES

SEC. 301. EXPANSION OF AUTHORITY TO ABATE INTEREST.

(a) **GENERAL RULE.**—Paragraph (1) of section 6404(e) (relating to abatement of interest in certain cases) is amended—

(1) by inserting "unreasonable" before "error" each place it appears in subparagraphs (A) and (B), and

(2) by striking "in performing a ministerial act" each place it appears and inserting "in performing a ministerial or managerial act".

(b) **CLERICAL AMENDMENT.**—The subsection heading for subsection (e) of section 6404 is amended—

(1) by striking "ASSESSMENTS" and inserting "ABATEMENT", and

(2) by inserting "UNREASONABLE" before "ERRORS".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of the enactment of this Act.

SEC. 302. REVIEW OF IRS FAILURE TO ABATE INTEREST.

(a) **IN GENERAL.**—Section 6404 is amended by adding at the end the following new subsection:

"(g) **REVIEW OF DENIAL OF REQUEST FOR ABATEMENT OF INTEREST.**—

"(1) IN GENERAL.—The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(iii) to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought within 180 days after the date of the mailing of the Secretary's final determination not to abate such interest.

"(2) SPECIAL RULES.—

"(A) DATE OF MAILING.—Rules similar to the rules of section 6213 shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

"(B) RELIEF.—Rules similar to the rules of section 6512(b) shall apply for purposes of this subsection.

"(C) REVIEW.—An order of the Tax Court under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests for abatement after the date of the enactment of this Act.

SEC. 303. EXTENSION OF INTEREST-FREE PERIOD FOR PAYMENT OF TAX AFTER NOTICE AND DEMAND.

(a) GENERAL RULE.—Paragraph (3) of section 6601(c) (relating to payments made within 10 days after notice and demand) is amended to read as follows:

"(3) PAYMENTS MADE WITHIN SPECIFIED PERIOD AFTER NOTICE AND DEMAND.—If notice and demand is made for payment of any amount and if such amount is paid within 21 calendar days (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6601(e)(2) is amended by striking "10 days from the date of notice and demand therefor" and inserting "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000)".

(2) Paragraph (3) of section 6651(a) is amended by striking "10 days of the date of the notice and demand therefor" and inserting "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any notice and demand given after December 31, 1996.

SEC. 304. ABATEMENT OF PENALTY FOR FAILURE TO MAKE REQUIRED DEPOSITS OF PAY-ROLL TAXES IN CERTAIN CASES.

(a) IN GENERAL.—Section 6656 (relating to failure to make deposit of taxes) is amended by adding at the end the following new subsections:

"(c) EXCEPTION FOR FIRST-TIME DEPOSITORS OF EMPLOYMENT TAXES.—The Secretary may waive the penalty imposed by subsection (a) on a person's inadvertent failure to deposit any employment tax if—

"(1) such person meets the requirements referred to in section 7430(c)(4)(A)(iii),

"(2) such failure occurs during the 1st quarter that such person was required to deposit any employment tax, and

"(3) the return of such tax was filed on or before the due date.

For purposes of this subsection, the term 'employment taxes' means the taxes imposed by subtitle C.

"(d) AUTHORITY TO ABATE PENALTY WHERE DEPOSIT SENT TO SECRETARY.—The Secretary may abate the penalty imposed by subsection (a) with respect to the first time a depositor is required to make a deposit if the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to deposits required to be made after the date of the enactment of this Act.

TITLE IV—JOINT RETURNS

SEC. 401. STUDIES OF JOINT RETURN-RELATED ISSUES.

The Secretary of the Treasury or his delegate and the Comptroller General of the United States shall each conduct separate studies of—

(1) the effects of changing the liability for tax on a joint return from being joint and several to being proportionate to the tax attributable to each spouse,

(2) the effects of providing that, if a divorce decree allocates liability for tax on a joint return filed before the divorce, the Secretary may collect such liability only in accordance with the decree,

(3) whether those provisions of the Internal Revenue Code of 1986 intended to provide relief to innocent spouses provide meaningful relief in all cases where such relief is appropriate, and

(4) the effect of providing that community income (as defined in section 66(d) of such Code) which, in accordance with the rules contained in section 879(a) of such Code, would be treated as the income of one spouse is exempt from a levy for failure to pay any tax imposed by subtitle A by the other spouse for a taxable year ending before their marriage.

The reports of such studies shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate within 6 months after the date of the enactment of this Act.

SEC. 402. JOINT RETURN MAY BE MADE AFTER SEPARATE RETURNS WITHOUT FULL PAYMENT OF TAX.

(a) **GENERAL RULE.**—Paragraph (2) of section 6013(b) (relating to limitations on filing of joint return after filing separate returns) is amended by striking subparagraph (A) and redesignating the following subparagraphs accordingly.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 403. DISCLOSURE OF COLLECTION ACTIVITIES.

(a) **IN GENERAL.**—Subsection (e) of section 6103 (relating to disclosure to persons having material interest) is amended by adding at the end the following new paragraph:

“(8) **DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN.**—If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected. The preceding sentence shall not apply to any deficiency which may not be collected by reason of section 6502.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

TITLE V—COLLECTION ACTIVITIES

SEC. 601. MODIFICATIONS TO LIEN AND LEVY PROVISIONS.

(a) **WITHDRAWAL OF CERTAIN NOTICES.**—Section 6323 (relating to validity and priority against certain persons) is amended by adding at the end the following new subsection:

“(j) **WITHDRAWAL OF NOTICE IN CERTAIN CIRCUMSTANCES.**—

“(1) **IN GENERAL.**—The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that—

“(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

“(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

“(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

“(D) with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer.

“(2) **NOTICE TO CREDIT AGENCIES, ETC.**—Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is

specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe."

(b) **RETURN OF LEVIED PROPERTY IN CERTAIN CASES.**—Section 6343 (relating to authority to release levy and return property) is amended by adding at the end the following new subsection:

"(d) **RETURN OF PROPERTY IN CERTAIN CASES.**—If—

"(1) any property has been levied upon, and

"(2) the Secretary determines that—

"(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

"(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

"(C) the return of such property will facilitate the collection of the tax liability, or

"(D) with the consent of the taxpayer or the Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c)."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 602. MODIFICATIONS TO CERTAIN LEVY EXEMPTION AMOUNTS.

(a) **FUEL, ETC.**—Paragraph (2) of section 6334(a) (relating to fuel, provisions, furniture, and personal effects exempt from levy) is amended—

(1) by striking "If the taxpayer is the head of a family, so" and inserting "So",

(2) by striking "his household" and inserting "the taxpayer's household", and

(3) by striking "\$1,650 (\$1,550 in the case of levies issued during 1989)" and inserting "\$2,500".

(b) **BOOKS, ETC.**—Paragraph (3) of section 6334(a) (relating to books and tools of a trade, business, or profession) is amended by striking "\$1,100 (\$1,050 in the case of levies issued during 1989)" and inserting "\$1,250".

(c) **INFLATION ADJUSTMENT.**—Section 6334 (relating to property exempt from levy) is amended by adding at the end the following new subsection:

"(f) **INFLATION ADJUSTMENT.**—

"(1) **IN GENERAL.**—In the case of any calendar year beginning after 1997, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1996' for 'calendar year 1992' in subparagraph (B) thereof.

"(2) **ROUNDING.**—If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10."

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect with respect to levies issued after December 31, 1996.

SEC. 603. OFFERS-IN-COMPROMISE.

(a) **REVIEW REQUIREMENTS.**—Subsection (b) of section 7122 (relating to records) is amended by striking "\$500." and inserting "\$50,000. However, such compromise shall be subject to continuing quality review by the Secretary."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on the date of the enactment of this Act.

TITLE VI—INFORMATION RETURNS

SEC. 601. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

(a) **GENERAL RULE.**—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by redesignating section 7434 as section 7435 and by inserting after section 7433 the following new section:

"SEC. 7434. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

"(a) **IN GENERAL.**—If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

"(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of—

"(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

"(2) the costs of the action, and

"(3) in the court's discretion, reasonable attorneys fees.

"(c) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce the liability created under this section may be brought without regard to the amount in controversy and may be brought only within the later of—

"(1) 6 years after the date of the filing of the fraudulent information return,

or

"(2) 1 year after the date such fraudulent information return would have been discovered by exercise of reasonable care.

"(d) COPY OF COMPLAINT FILED WITH IRS.—Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

"(e) FINDING OF COURT TO INCLUDE CORRECT AMOUNT OF PAYMENT.—The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

"(f) INFORMATION RETURN.—For purposes of this section, the term 'information return' means any statement described in section 6724(d)(1)(A)."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7434 and inserting the following:

"Sec. 7434. Civil damages for fraudulent filing of information returns.

"Sec. 7436. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fraudulent information returns filed after the date of the enactment of this Act.

SEC. 602. REQUIREMENT TO CONDUCT REASONABLE INVESTIGATIONS OF INFORMATION RETURNS.

(a) GENERAL RULE.—Section 6201 (relating to assessment authority) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS.—In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

TITLE VII—AWARDING OF COSTS AND CERTAIN FEES

SEC. 701. UNITED STATES MUST ESTABLISH THAT ITS POSITION IN PROCEEDING WAS SUBSTANTIALLY JUSTIFIED.

(a) GENERAL RULE.—Subparagraph (A) of section 7430(c)(4) (defining prevailing party) is amended by striking clause (i) and by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(b) BURDEN OF PROOF ON UNITED STATES.—Paragraph (4) of section 7430(c) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) EXCEPTION IF UNITED STATES ESTABLISHES THAT ITS POSITION WAS SUBSTANTIALLY JUSTIFIED.—

"(i) GENERAL RULE.—A party shall not be treated as the prevailing party in a proceeding to which subsection (a) applies if the United States establishes that the position of the United States in the proceeding was substantially justified.

"(ii) PRESUMPTION OF NO JUSTIFICATION IF INTERNAL REVENUE SERVICE DIDN'T FOLLOW CERTAIN PUBLISHED GUIDANCE.—For purposes of clause (i), the position of the United States shall be presumed not to

be substantially justified if the Internal Revenue Service did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

"(iii) APPLICABLE PUBLISHED GUIDANCE.—For purposes of clause (ii), the term 'applicable published guidance' means—

"(I) regulations, revenue rulings, revenue procedures, information releases, notices, and announcements, and

"(II) any of the following which are issued to the taxpayer: private letter rulings, technical advice memoranda, and determination letters."

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 7430(c)(2) is amended by striking "paragraph (4)(B)" and inserting "paragraph (4)(C)".

(2) Subparagraph (C) of section 7430(c)(4), as redesignated by subsection (b), is amended by striking "subparagraph (A)" and inserting "this paragraph".

(3) Sections 6404(g) and 6656(c)(1), as amended by this Act, are each amended by striking "section 7430(c)(4)(A)(iii)" and inserting "section 7430(c)(4)(A)(ii)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

SEC. 702. INCREASED LIMIT ON ATTORNEY FEES.

(a) IN GENERAL.—Paragraph (1) of section 7430(c) (defining reasonable litigation costs) is amended—

(1) by striking "\$75" in clause (iii) of subparagraph (B) and inserting "\$110",

(2) by striking "an increase in the cost of living or" in clause (iii) of subparagraph (B), and

(3) by adding after clause (iii) the following:

"In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (iii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

SEC. 703. FAILURE TO AGREE TO EXTENSION NOT TAKEN INTO ACCOUNT.

(a) IN GENERAL.—Paragraph (1) of section 7430(b) (relating to requirement that administrative remedies be exhausted) is amended by adding at the end the following new sentence: "Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

SEC. 704. AWARD OF LITIGATION COSTS PERMITTED IN DECLARATORY JUDGMENT PROCEEDINGS.

(a) IN GENERAL.—Subsection (b) of section 7430 is amended by striking paragraph (3) and by redesignating paragraph (4) as paragraph (3).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

TITLE VIII—MODIFICATION TO RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS

SEC. 801. INCREASE IN LIMIT ON RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS.

(a) GENERAL RULE.—Subsection (b) of section 7433 (relating to damages) is amended by striking "\$100,000" and inserting "\$1,000,000".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to actions by officers or employees of the Internal Revenue Service after the date of the enactment of this Act.

SEC. 802. COURT DISCRETION TO REDUCE AWARD FOR LITIGATION COSTS FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

(a) GENERAL RULE.—Paragraph (1) of section 7433(d) (relating to civil damages for certain unauthorized collection actions) is amended to read as follows:

"(1) AWARD FOR DAMAGES MAY BE REDUCED IF ADMINISTRATIVE REMEDIES NOT EXHAUSTED.—The amount of damages awarded under subsection (b) may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply in the case of proceedings commenced after the date of the enactment of this Act.

TITLE IX—MODIFICATIONS TO PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX

SEC. 601. PRELIMINARY NOTICE REQUIREMENT.

(a) IN GENERAL.—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) PRELIMINARY NOTICE REQUIREMENT.—

"(1) IN GENERAL.—No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) that the taxpayer shall be subject to an assessment of such penalty.

"(2) TIMING OF NOTICE.—The mailing of the notice described in paragraph (1) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

"(3) STATUTE OF LIMITATIONS.—If a notice described in paragraph (1) with respect to any penalty is mailed before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the later of—

"(A) the date 90 days after the date on which such notice was mailed, or

"(B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.

"(4) EXCEPTION FOR JEOPARDY.—This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to proposed assessments made after June 30, 1996.

SEC. 602. DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.

(a) IN GENERAL.—Subsection (e) of section 6103 (relating to disclosure to persons having material interest), as amended by section 403, is amended by adding at the end the following new paragraph:

"(9) DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY UNDER SECTION 6672.—If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person—

"(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and

"(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 603. RIGHT OF CONTRIBUTION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.

(a) IN GENERAL.—Section 6672 (relating to failure to collect and pay over tax, or attempt to evade or defeat tax) is amended by adding at the end the following new subsection:

"(d) RIGHT OF CONTRIBUTION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY.—If more than 1 person is liable for the penalty under subsection (a) with respect to any tax, each person who paid such penalty shall be entitled to recover from other persons who are liable for such penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined or consolidated with—

"(1) an action for collection of such penalty brought by the United States, or

- "(2) a proceeding in which the United States files a counterclaim or third-party complaint for the collection of such penalty."
- (b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 6672. VOLUNTEER BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS EXEMPT FROM PENALTY FOR FAILURE TO COLLECT AND PAY OVER TAX.

(a) **IN GENERAL.**—Section 6672 is amended by adding at the end the following new subsection:

"(e) **EXCEPTION FOR VOLUNTARY BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS.**—No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under subtitle A if such member—

"(1) is solely serving in an honorary capacity,

"(2) does not participate in the day-to-day or financial operations of the organization, and

"(3) does not have actual knowledge of the failure on which such penalty is imposed.

The preceding sentence shall not apply if it results in no person being liable for the penalty imposed by subsection (a)."

(b) **PUBLIC INFORMATION REQUIREMENTS.**—

(1) **IN GENERAL.**—The Secretary of the Treasury or the Secretary's delegate (hereafter in this subsection referred to as the "Secretary") shall take such actions as may be appropriate to ensure that employees are aware of their responsibilities under the Federal tax depository system, the circumstances under which employees may be liable for the penalty imposed by section 6672 of the Internal Revenue Code of 1986, and the responsibility to promptly report to the Internal Revenue Service any failure referred to in subsection (a) of such section 6672. Such actions shall include—

(A) printing of a warning on deposit coupon booklets and the appropriate tax returns that certain employees may be liable for the penalty imposed by such section 6672, and

(B) the development of a special information packet.

(2) **DEVELOPMENT OF EXPLANATORY MATERIALS.**—The Secretary shall develop materials explaining the circumstances under which board members of tax-exempt organizations (including voluntary and honorary members) may be subject to penalty under section 6672 of such Code. Such materials shall be made available to tax-exempt organizations.

(3) **IRS INSTRUCTIONS.**—The Secretary shall clarify the instructions to Internal Revenue Service employees on the application of the penalty under section 6672 of such Code with regard to voluntary members of boards of trustees or directors of tax-exempt organizations.

TITLE X—MODIFICATIONS OF RULES RELATING TO SUMMONSES

SEC. 1001. ENROLLED AGENTS INCLUDED AS THIRD-PARTY RECORDKEEPERS.

(a) **IN GENERAL.**—Paragraph (3) of section 7609(a) (relating to third-party record-keeper defined) is amended by striking "and" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting "; and", and by adding at the end the following subparagraph:

"(I) any enrolled agent."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to summonses issued after the date of the enactment of this Act.

SEC. 1002. SAFEGUARDS RELATING TO DESIGNATED SUMMONSES.

(a) **STANDARD OF REVIEW.**—Subparagraph (A) of section 6503(k)(2) (defining designated summons) is amended by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively, and by inserting before clause (ii) (as so redesignated) the following new clause:

"(i) the issuance of such summons is preceded by a review of such issuance by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted,"

(b) **LIMITATION ON PERSONS TO WHOM DESIGNATED SUMMONS MAY BE ISSUED.**—Paragraph (1) of section 6503(k) is amended by striking "with respect to any return of tax by a corporation" and inserting "to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by

such corporation for a taxable year (or other period) for which such corporation is being examined under the coordinated examination program (or any successor program) of the Internal Revenue Service".

(c) CLERICAL AMENDMENT.—Section 6503 is amended by redesignating subsections (k) and (l) (as amended by this section) as subsections (j) and (k), respectively.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to summonses issued after the date of the enactment of this Act.

SEC. 1003. ANNUAL REPORT TO CONGRESS CONCERNING DESIGNATED SUMMONSES.

Not later than December 31 of each calendar year after 1995, the Secretary of the Treasury or his delegate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the number of designated summonses (as defined in section 6503(j) of the Internal Revenue Code of 1986) which were issued during the preceding 12 months.

TITLE XI—RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS

SEC. 1101. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS.

(a) IN GENERAL.—Subsection (b) of section 7805 (relating to rules and regulations) is amended to read as follows:

"(b) RETROACTIVITY OF REGULATIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

"(A) The date on which such regulation is filed with the Federal Register.

"(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

"(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

"(2) EXCEPTION FOR PROMPTLY ISSUED REGULATIONS.—Paragraph (1) shall not apply to regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which the regulation relates.

"(3) PREVENTION OF ABUSE.—The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

"(4) CORRECTION OF PROCEDURAL DEFECTS.—The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

"(5) INTERNAL REGULATIONS.—The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

"(6) CONGRESSIONAL AUTHORIZATION.—The limitation of paragraph (1) may be superseded by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

"(7) ELECTION TO APPLY RETROACTIVELY.—The Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

"(8) APPLICATION TO RULINGS.—The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to regulations which relate to statutory provisions enacted on or after the date of the enactment of this Act.

TITLE XII—MISCELLANEOUS PROVISIONS

SEC. 1201. PHONE NUMBER OF PERSON PROVIDING PAYEE STATEMENTS REQUIRED TO BE SHOWN ON SUCH STATEMENT.

(a) GENERAL RULE.—The following provisions are each amended by striking "name and address" and inserting "name, address, and phone number of the information contact":

(1) Section 6041(d)(1).

- (2) Section 6041A(e)(1).
- (3) Section 6042(c)(1).
- (4) Section 6044(e)(1).
- (5) Section 6046(b)(1).
- (6) Section 6049(c)(1)(A).
- (7) Section 6050B(b)(1).
- (8) Section 6050H(d)(1).
- (9) Section 6050I(e)(1).
- (10) Section 6050J(c).
- (11) Section 6050K(b)(1).
- (12) Section 6050N(b)(1).

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to statements required to be furnished after December 31, 1996 (determined without regard to any extension).

SEC. 1202. REQUIRED NOTICE OF CERTAIN PAYMENTS.

If any payment is received by the Secretary of the Treasury or his delegate from any taxpayer and the Secretary cannot associate such payment with such taxpayer, the Secretary shall make reasonable efforts to notify the taxpayer of such inability within 60 days after the receipt of such payment.

SEC. 1203. UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

(a) **IN GENERAL.**—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties), as amended by section 601(s), is amended by redesignating section 7435 as section 7436 and by inserting after section 7434 the following new section:

"SEC. 7435. CIVIL DAMAGES FOR UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

"(a) **IN GENERAL.**—If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

"(b) **DAMAGES.**—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$500,000 or the sum of—

- "(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and
- "(2) the costs of the action.

Damages shall not include the taxpayer's liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

"(c) **PAYMENT AUTHORITY.**—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

"(d) **PERIOD FOR BRINGING ACTION.**—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

"(e) **MANDATORY STAY.**—Upon a certification by the Commissioner or the Commissioner's delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

"(f) **CRIME-FRAUD EXCEPTION.**—Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime."

(b) **CLERICAL AMENDMENT.**—The table of sections for subchapter B of chapter 76, as amended by section 601(b), is amended by striking the item relating to section 7435 and by adding at the end the following new items:

- "Sec. 7435. Civil damages for unauthorized enticement of information disclosure.
- "Sec. 7436. Cross reference."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to actions after the date of the enactment of this Act.

SEC. 1204. ANNUAL REMINDERS TO TAXPAYERS WITH OUTSTANDING DELINQUENT ACCOUNTS.

(a) **IN GENERAL.**—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end the following new section:

"SEC. 7524. ANNUAL NOTICE OF TAX DELINQUENCY.

"Not less often than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice."

(b) **CLERICAL AMENDMENT.**—The table of sections for chapter 77 is amended by adding at the end the following new item:

"Sec. 7524. Annual notice of tax delinquency."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to calendar years after 1996.

SEC. 1205. 5-YEAR EXTENSION OF AUTHORITY FOR UNDERCOVER OPERATIONS.

(a) **IN GENERAL.**—Paragraph (3) of section 7601(c) of the Anti-Drug Abuse Act of 1988 is amended by striking all that follows "this Act" and inserting a period.

(b) **RESTORATION OF AUTHORITY FOR 5 YEARS.**—Subsection (c) of section 7608 is amended by adding at the end the following new paragraph:

"(6) **APPLICATION OF SECTION.**—The provisions of this subsection—

"(A) shall apply after November 17, 1988, and before January 1, 1990,

and

"(B) shall apply after the date of the enactment of this paragraph and before January 1, 2001.

All amounts expended pursuant to this subsection during the period described in subparagraph (B) shall be recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before January 1, 2001."

(c) **ENHANCED OVERSIGHT.**—

(1) **ADDITIONAL INFORMATION REQUIRED IN REPORTS TO CONGRESS.**—Subparagraph (B) of section 7608(c)(4) is amended—

(A) by striking "preceding the period" in clause (ii),

(B) by striking "and" at the end of clause (ii), and

(C) by striking clause (iii) and inserting the following:

"(iii) the number, by programs, of undercover investigative operations closed in the 1-year period for which such report is submitted, and

"(iv) the following information with respect to each undercover investigative operation pending as of the end of the 1-year period for which such report is submitted or closed during such 1-year period—

"(I) the date the operation began and the date of the certification referred to in the last sentence of paragraph (1),

"(II) the total expenditures under the operation and the amount and use of the proceeds from the operation,

"(III) a detailed description of the operation including the potential violation being investigated and whether the operation is being conducted under grand jury auspices, and

"(IV) the results of the operation including the results of criminal proceedings."

(2) **AUDITS REQUIRED WITHOUT REGARD TO AMOUNTS INVOLVED.**—Subparagraph (C) of section 7608(c)(5) is amended to read as follows:

"(C) **UNDERCOVER INVESTIGATIVE OPERATION.**—The term 'undercover investigative operation' means any undercover investigative operation of the Service; except that, for purposes of subparagraphs (A) and (C) of paragraph (4), such term only includes an operation which is exempt from section 3302 or 9102 of title 31, United States Code."

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 1206. DISCLOSURE OF FORM 8300 INFORMATION ON CASH TRANSACTIONS.

(a) **IN GENERAL.**—Subsection (I) of section 6103 (relating to disclosure of returns and return information for purposes other than tax administration) is amended by adding at the end the following new paragraph:

"(15) **DISCLOSURE OF RETURNS FILED UNDER SECTION 60501.**—The Secretary may, upon written request, disclose to officers and employees of—

"(A) any Federal agency,

"(B) any agency of a State or local government, or

"(C) any agency of the government of a foreign country,

information contained on returns filed under section 6050I. Any such disclosure shall be made on the same basis, and subject to the same conditions, as apply to disclosures of information on reports filed under section 5313 of title 31, United States Code; except that no disclosure under this paragraph shall be made for purposes of the administration of any tax law."

(b) **CONFORMING AMENDMENTS.**—

- (1) Subsection (i) of section 6103 is amended by striking paragraph (8).
- (2) Subparagraph (A) of section 6103(p)(3) is amended—
 - (A) by striking "(7)(A)(ii), or (8)" and inserting "or (7)(A)(ii)", and
 - (B) by striking "or (14)" and inserting "(14), or (15)".
- (3) The material preceding subparagraph (A) of section 6103(p)(4) is amended—
 - (A) by striking "(5), or (8)" and inserting "or (5)",
 - (B) by striking "(i)(3)(B)(i), or (8)" and inserting "(i)(3)(B)(i),", and
 - (C) by striking "or (12)" and inserting "(12), or (15)".
- (4) Clause (ii) of section 6103(p)(4)(F) is amended—
 - (A) by striking "(5), or (8)" and inserting "or (5)", and
 - (B) by striking "or (14)" and inserting "(14), or (15)".
- (5) Paragraph (2) of section 7213(a) is amended by striking "or (12)" and inserting "(12), or (15)".

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1397. DISCLOSURE OF RETURNS AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER.

Subsection (c) of section 6103 (relating to disclosure of returns and return information to designee of taxpayer) is amended by striking "written request for or consent to such disclosure" and inserting "request for or consent to such disclosure".

SEC. 1398. STUDY OF NETTING OF INTEREST ON OVERPAYMENTS AND LIABILITIES.

- (a) **IN GENERAL.**—The Secretary of the Treasury or his delegate shall—
- (1) conduct a study of the manner in which the Internal Revenue Service has implemented the netting of interest on overpayments and underpayments and of the policy and administrative implications of global netting, and
 - (2) before submitting the report of such study, hold a public hearing to receive comments on the matters included in such study.
- (b) **REPORT.**—The report of such study shall be submitted not later than 6 months after the date of the enactment of this Act to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 1400. EXPENSES OF DETECTION OF UNDERPAYMENTS AND FRAUD, ETC.

(a) **IN GENERAL.**—Section 7623 (relating to expenses of deduction and punishment of frauds) is amended to read as follows:

"SEC. 7623. EXPENSES OF DETECTION OF UNDERPAYMENTS AND FRAUD, ETC.

"The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for—

- "(1) detecting underpayments of tax, and
- "(2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,

in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts (other than interest) collected by reason of the information provided, and any amount so collected shall be available for such payments."

(b) **CERAMICAL AMENDMENT.**—The table of sections for subchapter B of chapter 76 is amended by striking the item relating to section 7623 and inserting the following new item:

"Sec. 7623. Expenses of detection of underpayments and fraud, etc."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date which is 6 months after the date of the enactment of this Act.

(d) **REPORT.**—The Secretary of the Treasury or his delegate shall submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the payments under section 7623 of the Internal Revenue Code of 1986 during the year and on the amounts collected for which such payments were made.

SEC. 1210. USE OF PRIVATE DELIVERY SERVICES FOR TIMELY MAILING-AS-TIMELY-MAILING RULE.

Section 7502 (relating to timely mailing treated as timely filing and paying) is amended by adding at the end the following new subsection:

"(f) TREATMENT OF PRIVATE DELIVERY SERVICES.—

"(1) IN GENERAL.—Any reference in this section to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked as described in paragraph (2)(C) by any designated delivery service.

"(2) DESIGNATED DELIVERY SERVICE.—For purposes of this subsection, the term 'designated delivery service' means any delivery service provided by a trade or business if such service is designated by the Secretary for purposes of this section. The Secretary may designate a delivery service under the preceding sentence only if the Secretary determines that such service—

"(A) is available to the general public,

"(B) is at least as timely and reliable on a regular basis as the United States mail,

"(C) records electronically in its data base, kept in the regular course of its business, or marks on the cover in which any item referred to in this section is to be delivered, the date on which such item was given to such trade or business for delivery, and

"(D) meets such other criteria as the Secretary may prescribe.

"(3) EQUIVALENTS OF REGISTERED AND CERTIFIED MAIL.—The Secretary may provide a rule similar to the rule of paragraph (1) with respect to any service provided by a designated delivery service which is substantially equivalent to United States registered or certified mail."

SEC. 1211. REPORTS ON MISCONDUCT OF IRS EMPLOYEES.

On or before June 1 of each calendar year after 1996, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

(1) all categories of instances involving the misconduct of employees of the Internal Revenue Service during the preceding calendar year, and

(2) the disposition during the preceding calendar year of any such instances (without regard to the year of the misconduct).

TITLE XIII—REVENUE OFFSETS

Subtitle A—Application of Failure-to-Pay Penalty to Substitute Returns

SEC. 1301. APPLICATION OF FAILURE-TO-PAY PENALTY TO SUBSTITUTE RETURNS.

(a) **GENERAL RULE.—**Section 6651 (relating to failure to file tax return or to pay tax) is amended by adding at the end the following new subsection:

"(g) TREATMENT OF RETURNS PREPARED BY SECRETARY UNDER SECTION 6020(b).—In the case of any return made by the Secretary under section 6020(b)—

"(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

"(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a)."

(b) **EFFECTIVE DATE.—**The amendment made by subsection (a) shall apply in the case of any return the due date for which (determined without regard to extensions) is after the date of the enactment of this Act.

Subtitle B—Excise Taxes on Amounts of Private Excess Benefits

SEC. 1311. EXCISE TAXES FOR FAILURE BY CERTAIN CHARITABLE ORGANIZATIONS TO MEET CERTAIN QUALIFICATION REQUIREMENTS.

(a) **IN GENERAL.—**Chapter 42 (relating to private foundations and certain other tax-exempt organizations) is amended by redesignating subchapter D as subchapter E and by inserting after subchapter C the following new subchapter:

**"Subchapter D—Failure by Certain Charitable Organizations To Meet
Certain Qualification Requirements**

*Sec. 4958. Taxes on excess benefit transactions.

"SEC. 4958. TAXES ON EXCESS BENEFIT TRANSACTIONS.

"(a) INITIAL TAXES.—

"(1) ON THE DISQUALIFIED PERSON.—There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

"(2) ON THE MANAGEMENT.—In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

"(b) ADDITIONAL TAX ON THE DISQUALIFIED PERSON.—In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

"(c) EXCESS BENEFIT TRANSACTION; EXCESS BENEFIT.—For purposes of this section—

"(1) EXCESS BENEFIT TRANSACTION.—

"(A) IN GENERAL.—The term 'excess benefit transaction' means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

"(B) EXCESS BENEFIT.—The term 'excess benefit' means the excess referred to in subparagraph (A).

"(2) AUTHORITY TO INCLUDE CERTAIN OTHER PRIVATE INurement.—To the extent provided in regulations prescribed by the Secretary, the term 'excess benefit transaction' includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

"(2) LIMIT FOR MANAGEMENT.—With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000.

"(e) APPLICABLE TAX-EXEMPT ORGANIZATION.—For purposes of this subchapter, the term 'applicable tax-exempt organization' means—

"(1) any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), and

"(2) any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.

Such term shall not include a private foundation (as defined in section 509(a)).

"(f) OTHER DEFINITIONS.—For purposes of this section—

"(1) DISQUALIFIED PERSON.—The term 'disqualified person' means, with respect to any transaction—

"(A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization,

"(B) a member of the family of an individual described in subparagraph (A), and

"(C) a 35 percent controlled entity.

"(2) ORGANIZATION MANAGER.—The term 'organization manager' means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

"(3) 35-PERCENT CONTROLLED ENTITY.—

"(A) IN GENERAL. The term '35-percent controlled entity' means—

"(i) a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,

"(ii) a partnership in which such persons own more than 35 percent of the profits interest, and

"(iii) a trust or estate in which such persons own more than 35 percent of the beneficial interest.

"(B) CONSTRUCTIVE OWNERSHIP RULES.—Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.

"(4) FAMILY MEMBERS.—The members of an individual's family shall be determined under section 4946(d); except that such members also shall include the brothers and sisters (whether by the whole or half blood) of the individual and their spouses.

"(5) TAXABLE PERIOD.—The term 'taxable period' means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of—

"(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

"(B) the date on which the tax imposed by subsection (a)(1) is assessed.

"(6) CORRECTION.—The terms 'correction' and 'correct' mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards."

(b) APPLICATION OF PRIVATE INurement RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).—

(1) IN GENERAL.—Paragraph (4) of section 501(c) is amended by inserting "(A)" after "(4)" and by adding at the end the following:

"(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual."

(2) SPECIAL RULE FOR CERTAIN COOPERATIVES.—In the case of an organization operating on a cooperative basis which, before the date of the enactment of this Act, was determined by the Secretary of the Treasury or his delegate, to be described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, the allocation or return of net margins or capital to the members of such organization in accordance with its incorporating statute and bylaws shall not be treated for purposes of such Code as the inurement of the net earnings of such organization to the benefit of any private shareholder or individual. The preceding sentence shall apply only if such statute and bylaws are substantially as such statute and bylaws were in existence on the date of the enactment of this Act.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4955 is amended—

(A) by striking "SECTION 4945" in the heading and inserting "SECTIONS 4945 AND 4958", and

(B) by inserting before the period "or an excess benefit for purposes of section 4958".

(2) Subsections (a), (b), and (c) of section 4963 are each amended by inserting "4958," after "4955,".

(3) Subsection (e) of section 6213 is amended by inserting "4958 (relating to private excess benefit)," before "4971".

(4) Paragraphs (2) and (3) of section 7422(g) are each amended by inserting "4958," after "4955,".

(5) Subsection (b) of section 7454 is amended by inserting "or whether an organization manager (as defined in section 4968(f)(2)) has 'knowingly' participated in an excess benefit transaction (as defined in section 4958(c)),⁶ after "section 4912(b),".

(6) The table of subchapters for chapter 42 is amended by striking the last item and inserting the following:

"SUBCHAPTER D. Failure by certain charitable organizations to meet certain qualification requirements.

"SUBCHAPTER E. Abatement of first and second tier taxes in certain cases."

(d) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—The amendments made by this section (other than subsection (b)) shall apply to excess benefit transactions occurring on or after September 14, 1995.

(2) **BINDING CONTRACTS.**—The amendments referred to in paragraph (1) shall not apply to any benefit arising from a transaction pursuant to any written contract which was binding on September 13, 1995, and at all times thereafter before such transaction occurred.

(3) **APPLICATION OF PRIVATE INurement RULE TO TAX-EXEMPT ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).**—

(A) **IN GENERAL.**—The amendment made by subsection (b) shall apply to inurement occurring on or after September 14, 1995.

(B) **BINDING CONTRACTS.**—The amendment made by subsection (b) shall not apply to any inurement occurring before January 1, 1997, pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such inurement occurred.

SEC. 1312. REPORTING OF CERTAIN EXCISE TAXES AND OTHER INFORMATION.

(a) **REPORTING BY ORGANIZATIONS DESCRIBED IN SECTION 501(c)(3).**—Subsection (b) of section 6033 (relating to certain organizations described in section 501(c)(3)) is amended by striking "and" at the end of paragraph (9), by redesignating paragraph (10) as paragraph (14), and by inserting after paragraph (9) the following new paragraphs:

"(10) the respective amounts (if any) of the taxes paid by the organization during the taxable year under the following provisions:

"(A) section 4911 (relating to tax on excess expenditures to influence legislation),

"(B) section 4912 (relating to tax on disqualifying lobbying expenditures of certain organizations), and

"(C) section 4955 (relating to taxes on political expenditures of section 501(c)(3) organizations),

"(11) the respective amounts (if any) of the taxes paid by the organization, or any disqualified person with respect to such organization, during the taxable year under section 4958 (relating to taxes on private excess benefit from certain charitable organizations),

"(12) such information as the Secretary may require with respect to any excess benefit transaction (as defined in section 4958),

"(13) such information with respect to disqualified persons as the Secretary may prescribe, and".

(b) **ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).**—Section 6033 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) **CERTAIN ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).**—Every organization described in section 501(c)(4) which is subject to the requirements of subsection (a) shall include on the return required under subsection (a) the information referred to in paragraphs (11), (12) and (13) of subsection (b) with respect to such organization."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to returns for taxable years beginning after the date of the enactment of this Act.

SEC. 1313. EXEMPT ORGANIZATIONS REQUIRED TO PROVIDE COPY OF RETURN.

(a) **REQUIREMENT TO PROVIDE COPY.**—

(1) Subparagraph (A) of section 6104(e)(1) (relating to public inspection of annual returns) is amended to read as follows:

"(A) **IN GENERAL.**—During the 3-year period beginning on the filing date—

"(i) a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

"(ii) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return shall be

provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The request described in clause (ii) must be made in person or in writing. If the request under clause (ii) is made in person, such copy shall be provided immediately and, if made in writing, shall be provided within 30 days."

(2) Clause (ii) of section 6104(e)(2)(A) is amended by inserting before the period at the end the following: "(and, upon request of an individual made at such principal office or such a regional or district office, a copy of the material requested to be available for inspection under this subparagraph shall be provided (in accordance with the last sentence of paragraph (1)(A)) to such individual without charge other than reasonable fee for any reproduction and mailing costs)".

(3) Subsection (e) of section 6104 is amended by adding at the end the following new paragraph:

"(3) LIMITATION.—Paragraph (1)(A)(ii) (and the corresponding provision of paragraph (2)) shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available, or, the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest."

(b) INCREASE IN PENALTY FOR WILLFUL FAILURE TO ALLOW PUBLIC INSPECTION OF CERTAIN RETURNS, ETC.—Section 6085 is amended by striking "\$1,000" and inserting "\$5,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to requests made on or after the 60th day after the Secretary of the Treasury first issues the regulations referred to section 6104(e)(3) of the Internal Revenue Code of 1986 (as added by subsection (a)(3)).

SEC. 1314. INCREASE IN PENALTIES ON EXEMPT ORGANIZATIONS FOR FAILURE TO FILE COMPLETE AND TIMELY ANNUAL RETURNS.

(a) IN GENERAL.—Subparagraph (A) of section 6652(c)(1) (relating to annual returns under section 6033) is amended by striking "\$10" and inserting "\$20" and by striking "\$5,000" and inserting "\$10,000".

(b) LARGER PENALTY ON ORGANIZATIONS HAVING GROSS RECEIPTS IN EXCESS OF \$1,000,000.—Subparagraph (A) of section 6652(c)(1) is amended by adding at the end the following new sentence: "In the case of an organization having gross receipts exceeding \$1,000,000 for any year, with respect to the return required under section 6033 for such year, the first sentence of this subparagraph shall be applied by substituting '\$100' for '\$20' and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed \$50,000."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns for taxable years ending on or after the date of the enactment of this Act.

I. INTRODUCTION

A. Purpose and summary

H.R. 2337, as amended, provides amendments relating to "Taxpayer Bill of Rights 2" (Titles I–XII) and two revenue offsets to pay for these provisions (Title XIII). The revenue offsets are (1) apply failure-to-pay penalty to substitute returns and (2) intermediate sanctions for certain tax-exempt organizations.

B. Background and need for legislation

The bill, as amended, is intended to provide for increased protections of taxpayer rights in complying with the Internal Revenue Code and in dealing with the Internal Revenue Service (IRS) in its administration of the tax laws.

The bill, as amended, establishes a Taxpayer Advocate within the IRS, expands the authority to issue Taxpayer Assistance Orders, modifies installment payment agreement provisions, revises provisions relating to abatement of interest and penalties and joint

returns, modifies lien and levy and offers-in-compromise provisions, provides that the Government must establish that its position in a proceeding was substantially justified, increases the limit on recovery of civil damages for unauthorized collection actions from \$100,000 to \$1,000,000, provides safeguards relating to designated summonses, provides relief from retroactive application of Treasury Department Regulations, requires notice to taxpayers of certain payments and annual reminders to taxpayers with outstanding delinquent accounts, and certain other provisions. The bill also applies the failure-to-pay penalty to substitute returns in the same manner as the penalty applies to delinquent filers. Further, the bill provides intermediate sanctions for certain tax-exempt organizations.

C. Legislative history

H.R. 2337 was introduced by Mrs. Johnson of Connecticut and Mr. Matsui on September 14, 1995, and was amended by the Committee in a markup on March 21, 1996. An amendment in the nature of a substitute (offered by Mrs. Johnson and Mr. Matsui) was adopted, as amended, by a voice vote. The bill, as amended, was ordered favorably reported by a voice vote on March 21, 1996.

Two amendments offered en bloc by Mrs. Johnson to the amendment in the nature of a substitute were adopted in one voice vote: (1) require annual reports on misconduct by IRS employees and (2) authorize the use of "qualified private delivery services" as meeting the "timely-mailing as timely-filing" rule of Code section 7502.

The provisions of Titles I–XII of the bill generally were included in the Committee's 1995 reconciliation submission to the House Committee on the Budget: Subtitle C of Title XIII of H.R. 2491 as passed by the House of Representatives in 1995. (See H.Rept. 104–280, October 17, 1995.) The conference agreement on H.R. 2491 contained certain of the House-passed Taxpayer Bill of Rights 2 provisions. The revenue-offset provisions in title XIII of the bill also were included in H.R. 2491 as passed by the Congress. H.R. 2491 was vetoed by the President.

II. EXPLANATION OF THE BILL

A. Taxpayer bill of rights 2 provisions

I. TAXPAYER ADVOCATE

a. Establishment of position of taxpayer advocate within Internal Revenue Service (sec. 101 of the bill and sec. 7802 of the code)

Present Law

The Office of the Taxpayer Ombudsman was created by the Internal Revenue Service (IRS) in 1979. The Taxpayer Ombudsman's duties are to serve as the primary advocate, within the IRS, for taxpayers. As the taxpayers' advocate, the Taxpayer Ombudsman participates in an ongoing review of IRS policies and procedures to determine their impact on taxpayers, receives ideas from the public concerning tax administration, identifies areas of the tax law that confuse or create an inequity for taxpayers, and supervises cases handled under the Problem Resolution Program. Under current

procedures, the Taxpayer Ombudsman is selected by the Commissioner of the IRS and serves at the Commissioner's discretion.

Reasons for change

To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the Taxpayer Ombudsman is not an independent advocate for taxpayers. In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, it is believed to be appropriate that the position be elevated to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas.

Explanation of provision

The bill establishes a new position, Taxpayer Advocate, within the IRS. This replaces the position of Taxpayer Ombudsman. The Taxpayer Advocate is appointed by and reports directly to the Commissioner. Compensation of the Taxpayer Advocate is at a level equal to that of the highest level official reporting directly to the Deputy Commissioner of the IRS.

The bill also establishes the Office of Taxpayer Advocate within the IRS. The functions of the office are (1) to assist taxpayers in resolving problems with the IRS, (2) to identify areas in which taxpayers have problems in dealings with the IRS, (3) to propose changes (to the extent possible) in the administrative practices of the IRS that will mitigate those problems, and (4) to identify potential legislative changes that may mitigate those problems.

While the Taxpayer Advocate would not have direct line authority over the regional and local Problem Resolution Officers (PROs), the Committee believes that all PROs should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc. Accordingly, the Committee recommends and encourages that regional PROs actively participate in the selection and evaluation of local PROs.

The Taxpayer Advocate is required to make two annual reports to the tax-writing committees. The first report is to contain the objectives of the Taxpayer Advocate for the next calendar year. This report is to contain full and substantive analysis, in addition to statistical information, and is due not later than June 30 of each year.

The second report is on the activities of the Taxpayer Advocate during the previous fiscal year. The report must identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness, contain recommendations received from individuals who have the authority to issue a Taxpayer Assistance Order (TAO), describe in detail the progress made in implementing these recommendations, contain a summary of at least 20 of the most serious problems which taxpayers have in dealing

with the IRS, include recommendations for such administrative and legislative action as may be appropriate to resolve such problems, describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and include other such information as the Taxpayer Advocate may deem advisable. The Commissioner is required to establish internal procedures that will ensure a formal IRS response within three months to all recommendations submitted to the Commissioner by the Taxpayer Advocate. This second report is due not later than December 31 of each year.

The reports submitted to Congress by the Taxpayer Advocate are not subject to prior review by the Commissioner, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget. The objective is for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate are not official legislative recommendations of the Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury.

Effective date

The provision is effective on the date of enactment. The first annual reports of the Taxpayer Advocate are due in June and December, 1996.

b. Expansion of authority to issue taxpayer assistance orders (sec. 102 of the bill and sec. 7811 of the Code)

Present law

Section 7811(a) authorizes the Taxpayer Ombudsman to issue a Taxpayer Assistance Order (TAO). TAOs may order the release of taxpayer property levied upon by the IRS and may require the IRS to cease any action, or refrain from taking any action if, in the determination of the Taxpayer Ombudsman, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered.

Reasons for change

The requirement that the significant hardship be as a result of the manner in which the internal revenue laws are being administered has resulted in confusion as to the circumstances which justify the issuance of a TAO. The most frequent situation where a TAO may be needed, but may not be authorized under present law, involves income tax refunds that are needed to relieve severe hardship of taxpayers. Another example involves the re-issuance of refund checks which have been sent by the IRS to an address at which the taxpayer no longer resides. While the mailing of the check to the incorrect address might in no way be due to the fault of the IRS, the normal delays in reissuing such a check may cause great hardship for the taxpayer. Also, the IRS Collection Division may take an enforcement action when the taxpayer has had no actual notice of the deficiency and is not afforded any opportunity to obtain an administrative review of the validity of the tax defi-

ciency. In cases like these, it may be appropriate for the Taxpayer Advocate to issue a TAO to temporarily stay the IRS collection action in order to allow for a review of the appropriateness of the proposed action.

Explanation of provision

The bill provides the Taxpayer Advocate with broader authority to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws. In addition, the bill provides that a TAO may specify a time period within which the TAO must be followed. Further, the bill provides that only the Taxpayer Advocate, the Commissioner of the IRS, or the Deputy Commissioner, may modify or rescind a TAO. Any official who modifies or rescinds a TAO must provide the Taxpayer Advocate a written explanation of the reasons for the modification or rescission.

Effective date

The provision is effective on the date of enactment.

2. MODIFICATIONS TO INSTALLMENT AGREEMENT PROVISIONS

a. Notification of reasons for termination of installment agreements (sec. 201 of the bill and sec. 6159 of the Code)

Present law

Section 6159 authorizes the IRS to enter into written installment agreements with taxpayers to facilitate the collection of tax liabilities. In general, the IRS has the right to terminate (or in some instances, alter or modify) such agreements if the taxpayer provided inaccurate or incomplete information before the agreement was entered into, if the taxpayer fails to make a timely payment of an installment or another tax liability, if the taxpayer fails to provide the IRS with a requested update of financial condition, if the IRS determines that the financial condition of the taxpayer has changed significantly, or if the IRS believes collection of the tax liability is in jeopardy. If the IRS determines that the financial condition of a taxpayer that has entered into an installment agreement has changed significantly, the IRS must provide the taxpayer with a written notice that explains the IRS determination at least 30 days before altering, modifying, or terminating the installment agreement. No notice is statutorily required if the installment agreement is altered, modified, or terminated for other reasons.

Reasons for change

The Committee believes that the IRS generally should notify taxpayers if an installment agreement is altered, modified, or terminated.

Explanation of provision

The bill requires the IRS to notify taxpayers 30 days before altering, modifying, or terminating any installment agreement for any reason other than that the collection of tax is determined to be in

jeopardy. The IRS must include in the notification an explanation of why the IRS intends to take this action.

Effective date

The provision is effective six months after the date of enactment.

b. Administrative review of termination of installment agreements (sec. 202 of the bill and sec. 6159 of the Code)

Present law

The IRS is currently testing an appeal process for various collection actions, including installment agreements, that will permit taxpayers to appeal these collection actions to Appeals Division personnel.

Reasons for change

The Committee believes that taxpayers should be able to obtain an independent administrative review of terminations of installment agreements.

Explanation of provision

The bill requires the IRS to establish additional procedures for an independent administrative review of terminations of installment agreements for taxpayers who request a review.

Effective Date

The provision is effective on January 1, 1997.

3. ABATEMENT OF INTEREST AND PENALTIES

a. Expansion of authority to abate interest (sec. 301 of the bill and sec. 6404 of the code)

Present law

Any assessment of interest on any deficiency attributable in whole or in part to any error or delay by an officer or employee of the IRS (acting in his official capacity) in performing a ministerial act may be abated.

Reasons for change

The Committee believes that it is appropriate to expand the authority to abate interest to include delays caused by managerial acts of the IRS.

Explanation of provision

The bill permits the IRS to abate interest with respect to any unreasonable error or delay resulting from managerial acts as well as ministerial acts. This would include extensive delays resulting from managerial acts such as: the loss of records by the IRS, IRS personnel transfers, extended illnesses, extended personnel training, or extended leave. On the other hand, interest would not be abated for delays resulting from general administrative decisions. For example, the taxpayer could not claim that the IRS's decision on how to organize the processing of tax returns or its delay in implementing an improved computer system resulted in an unreasonable

delay in the Service's action on the taxpayer's tax return, and so the interest on any subsequent deficiency should be waived.

Effective date

The provision applies to interest accruing with respect to deficiencies or payments for taxable years beginning after the date of enactment.

b. Review of IRS failure to abate interest (sec. 302 of the bill and sec. 6404 of the Code)

Present law

Federal courts generally do not have the jurisdiction to review the IRS's failure to abate interest.

Reasons for change

The Committee believes that it is appropriate for the Tax Court to have jurisdiction to review IRS's failure to abate interest with respect to certain taxpayers.

Explanation of provision

The bill grants the Tax Court jurisdiction to determine whether the IRS's failure to abate interest for an eligible taxpayer was an abuse of discretion. The Tax Court may order an abatement of interest. The action must be brought within 180 days after the date of mailing of the Secretary's final determination not to abate interest. An eligible taxpayer must meet the net worth and size requirements imposed with respect to awards of attorney's fees. No inference is intended as to whether under present law any court has jurisdiction to review IRS's failure to abate interest.

Effective date

The provision applies to requests for abatement after the date of enactment.

c. Extension of interest-free period for payment of tax after notice and demand (sec. 303 of the bill and sec. 6601 of the code)

Present law

In general, a taxpayer must pay interest on late payments of tax. An interest-free period of 10 calendar days is provided to taxpayers who pay the tax due within 10 calendar days of notice and demand.

Reasons for change

The 10-day interest-free period was designed to give taxpayers time to receive the notice and pay the amount due. Because it may be very difficult for some taxpayers to remit payment within the ten-day period, particularly if the mail has delayed delivery of the notice, the IRS must recompute interest and send another notice to taxpayers.

Explanation of provision

The bill extends the interest-free period provided to taxpayers for the payment of the tax liability reflected in the notice from 10 cal-

endar days to 10 business days (21 calendar days, provided that the total tax liability shown on the notice of deficiency is less than \$100,000).

Effective date

The provision applies in the case of any notice and demand given after December 31, 1996.

d. Abatement of penalty for failure to make required deposits of payroll taxes in certain cases (sec. 304 of the bill and sec. 6656 of the Code)

Present law

If any person who is required to deposit taxes imposed by the Internal Revenue Code with a government depository fails to deposit such taxes on or before the prescribed date, a penalty may be imposed, unless it is shown that such failure is due to reasonable cause and not willful neglect. The penalty contains a four-tiered structure in which the amount of the penalty varies with the length of time within which the taxpayer corrects the failure. The amount of the underpayment for this purpose is the excess of the amount of the tax required to be deposited over the amount of the tax, if any, deposited on or before the prescribed date.

Reasons for change

The Committee believes that it is appropriate to enumerate additional circumstances under which this penalty may be waived or abated.

Explanation of provision

The bill provides that the Secretary may waive this penalty with respect to an inadvertent failure to deposit any employment tax if: (a) the depositing entity meets the net worth requirements applicable for awards of attorney's fees; (b) the failure to deposit occurs during the first quarter that the depositing entity was required to deposit any employment tax; and (c) the return for the employment tax was filed on or before the due date.

The bill also provides that the Secretary may abate any penalty for failure to make deposits for the first time a depositing entity makes a deposit if it inadvertently sends the deposit to the Secretary instead of to the required government depository.

Effective date

The provision is effective on the date of enactment.

4. JOINT RETURNS

a. Studies of joint and several liability for married persons filing joint tax returns and other joint return-related issues (sec. 401 of the bill)

Present law

Spouses who file a joint tax return are each fully responsible for the accuracy of the return and for the full tax liability. This is true even though only one spouse may have earned the wages or income

which is shown on the return. This is "joint and several" liability. Spouses who wish to avoid joint liability may file as a "married person filing separately."

Spouses often file a joint tax return but then later are separated or divorced. If the IRS later disputes the accuracy of the joint tax returns, one spouse may be held liable for the entire tax deficiency stemming from erroneous deductions or omitted income attributable to the other spouse. Therefore, the "innocent" spouse may be held liable for the full deficiency in a subsequent audit occurring after the separation or divorce. This has resulted in a serious hardship being imposed on an "innocent spouse" in a number of cases.

In some cases, a couple addresses the responsibility for tax liability as part of their divorce decree. However, these agreements are not binding on the IRS because the IRS was not a party to the divorce proceeding. Thus, if a former spouse violates the tax responsibilities assigned to him or her in a divorce decree, the other spouse may not rely on the decree in dealing with the IRS.

While present law does contain provisions which give relief to certain innocent spouses in these situations, the provisions are narrowly drawn and strictly interpreted. Therefore, many former spouses are not able to qualify for the protections of the current "innocent spouse" rules.

In 1930, the Supreme Court ruled in *Poe v. Seaborn*, 282 U.S. 101 (1930), that all the earnings of a married couple in community property states were part of the marital property to which each spouse had an equal right. At the time, married couples generally welcomed this decision because it allowed couples in community property states to benefit from income "splitting" between the husband and wife for income tax purposes. Later, the Federal tax law was changed to allow all married taxpayers to "split" their income by means of filing a joint tax return.

While the income-splitting effect of *Poe v. Seaborn* is now moot, the decision continues to affect married couples in community property states, but in an adverse way. For example, there are cases where a divorced spouse owes the IRS a tax liability based on his or her joint return filed during the marital years. When this spouse remarries, the new spouse's income may become subject to levy in order to satisfy the tax deficiency of the prior spouse. In contrast, if the couple did not live in a community property state, the second spouse's wages could not be levied to pay a tax liability arising from this spouse's first marriage.

Reasons for change

The Committee believes that the traditional standard of joint and several liability for married couples filing a joint tax return should be re-examined.

Explanation of provision

The bill directs the Treasury Department and the General Accounting Office (GAO) to conduct separate studies analyzing the following:

- (1) The effects of changing the current standard of "joint and several" liability for married couples to a "proportionate" liability

standard. That is, each spouse would be liable only for the income tax attributable to the income of each spouse.

(2) The effects of requiring the IRS to be bound by the terms of a divorce decree which addresses the responsibility for the tax liability on prior joint tax returns.

(3) Whether the current "innocent spouse" provisions provide meaningful relief to former spouses.

(4) The effects of overturning the application of *Poe v. Seaborn* for income tax purposes in community property states.

The Treasury Department and the GAO must examine the tax policy implications, the equity implications, and operational changes which would face the IRS if the liability standard were changed. For example, the studies must consider how a system of proportionate liability would change the way the IRS communicates with taxpayers, conducts audits of joint returns, and enforces tax lien and levies against married couples.

Effective date

The studies are due six months after the date of enactment.

b. Joint return may be made after separate returns without full payment of tax (sec. 402 of the bill and sec. 6013 of the Code)

Present law

Taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded by statute from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability before the expiration of the three-year period for making the election to file jointly.

Reasons for change

Not all taxpayers are able to pay the full amount owed on their returns by the filing deadline. In such circumstances, the IRS encourages the taxpayer to pay the tax as soon as possible or enter into an installment agreement. However, taxpayers who file separate returns and subsequently determine that their tax liability would have been less if they had filed a joint return are precluded from reducing their tax liability by filing jointly if they are unable to pay the entire amount of the joint return liability. This rule may be unfair to taxpayers experiencing financial difficulties.

Explanation of provision

The bill repeals the requirement of full payment of tax liability as a precondition to switching from married filing separately status to married filing jointly status.

Effective date

The provision applies to taxable years beginning after the date of the enactment.

c. Disclosure of collection activities with respect to joint returns (sec. 403 of the bill and sec. 6103 of the Code)

Present law

The IRS does not routinely disclose collection information to a former spouse that relates to tax liabilities attributable to a joint return that was filed when married.

Reasons for change

The Committee believes that it is appropriate to require the IRS to discuss with one former spouse the efforts it has made to collect the joint return tax liability from the other spouse.

Explanation of provision

If a tax deficiency with respect to a joint return is assessed, and the individuals filing the return are no longer married or no longer reside in the same household, the bill requires the IRS to disclose in writing (in response to a written request by one of the individuals) to that individual whether the IRS has attempted to collect the deficiency from the other individual, the general nature of the collection activities, and the amount (if any) collected.

Such requests must be made in writing. The IRS may develop procedures to address the frequency of such requests in order to prevent taxpayers from abusing this provision by making numerous requests without good cause. For example, one request per quarter would be a reasonable rate unless the taxpayer had good cause to seek more frequent information.

In making these disclosures, the IRS may omit the current home address and business location of the former spouse. This is designed to prevent the disclosure of such personal information to persons who might be hostile towards a former spouse.

Effective date

The provision is effective on the date of enactment.

5. COLLECTION ACTIVITIES

a. Modifications to lien and levy provisions

i. Withdrawal of public notice of lien (sec. 501(a) the bill and sec. 6323 of the Code)

Present law

The IRS must file a notice of lien in the public record, in order to protect the priority of a tax lien. A notice of tax lien provides public notice that a taxpayer owes the Government money. The IRS has discretion in filing such a notice, but may withdraw a filed notice only if the notice (and the underlying lien) was erroneously filed or if the underlying lien has been paid, bonded, or become unenforceable.

Reasons for change

The Committee believes that it is appropriate to give the IRS discretion to withdraw a notice of lien in other situations as well.

Explanation of provision

The bill allows the IRS to withdraw a public notice of tax lien prior to payment in full by the indebted taxpayer without prejudice, if the Secretary determines that (1) the filing of the notice was premature or otherwise not in accordance with the administrative procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability with respect to which the lien was filed, (3) the withdrawal of the lien will facilitate collection of the tax liability, or (4) the withdrawal of the lien would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and of the Government. The IRS must also provide a copy of the notice of withdrawal to the taxpayer. The bill also requires that, at the written request of the taxpayer, the IRS make reasonable efforts to give notice of the withdrawal of a lien to creditors, credit reporting agencies, and financial institutions specified by the taxpayer.

Effective date

The provision is effective on the date of enactment.

ii. Return of levied property (sec. 501(b) of the bill and sec. 6343 of the Code)

Present law

The IRS is authorized to levy on the property of a taxpayer as a means of collecting unpaid taxes. The IRS is able to return levied property to a taxpayer only when the taxpayer has fully paid its liability with respect to tax, interest, and penalty for which the property was levied.

Reasons for change

There are several situations where the IRS is not authorized to return levied-upon amounts, even when it believes doing so would be equitable and in the best interests of the taxpayer and the Government. For example, if the IRS enters into an installment agreement and, in contradiction to the terms of the installment agreement, the IRS levies on the taxpayer's property, the IRS is prohibited from returning the property to the taxpayer. The Committee believes that it is appropriate to give the IRS authority to return levied property in other circumstances as well.

Explanation of provision

The bill allows the IRS to return property (including money deposited in the Treasury) that has been levied upon if the Secretary determines that (1) the levy was premature or otherwise not in accordance with the administrative procedures of the IRS, (2) the taxpayer has entered into an installment agreement to satisfy the tax liability, (3) the return of the property will facilitate collection of the tax liability, or (4) the return of the property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the Government.

Effective date

The provision is effective on the date of enactment.

iii. Modifications in certain levy exemption amounts (sec. 502 of the bill and sec. 6334 of the Code)

Present law

Property exempt from levy includes personal property with a value of up to \$1,650 and books and tools of a trade with a value of up to \$1,100.

Reasons for change

The Committee believes that these amounts should be increased and indexed for inflation.

Explanation of provision

The bill increases the exemption amount to \$2,500 for personal property and increases the exemption amount to \$1,250 for books and tools of a trade. These amounts are indexed for inflation commencing January 1, 1997.

Effective date

The provision is effective with respect to levies issued after December 31, 1996.

b. Offers-in-compromise (sec. 503 of the bill and sec. 7122 of the Code)

Present law

The IRS has the authority to settle a tax debt pursuant to an offer-in-compromise. IRS regulations provide that such offers can be accepted if: the taxpayer is unable to pay the full amount of the tax liability and it is doubtful that the tax, interest, and penalties can be collected or there is doubt as to the validity of the actual tax liability. Amounts over \$500 can only be accepted if the reasons for the acceptance are documented in detail and supported by an opinion of the IRS Chief Counsel.

Reasons for change

The Committee believes that the \$500 threshold amount requiring a written opinion from the IRS Chief Counsel slows the approval process for most offers-in-compromise and is unnecessarily low.

Explanation of provision

The bill increases from \$500 to \$50,000 the amount requiring a written opinion from the Office of Chief Counsel. Compromises below the \$50,000 threshold must be subject to continuing quality review by the IRS.

Effective date

The provision is effective on the date of enactment.

6. INFORMATION RETURNS

*a. Civil damages for fraudulent filing of information returns (sec. 601 of the bill and new sec. 7434 of the Code)**Present law*

Federal law provides no private cause of action to a taxpayer who is injured because a fraudulent information return has been filed with the IRS asserting that payments have been made to the taxpayer.

Reasons for change

Some taxpayers may suffer significant personal loss and inconvenience as the result of the IRS receiving fraudulent information returns, which have been filed by persons intent on either defrauding the IRS or harassing taxpayers.

Explanation of provision

The bill provides that, if any person willfully files a fraudulent information return with respect to payments purported to have been made to another person, the other person may bring a civil action for damages against the person filing that return. A copy of the complaint initiating the action must be provided to the IRS. Recoverable damages are the greater of (1) \$5,000 or (2) the amount of actual damages (including the costs of the action) and, in the court's discretion, reasonable attorney's fees. The court must specify in any decision awarding damages the correct amount (if any) that should have been reported on the information return. An action seeking damages under this provision must be brought within six years after the filing of the fraudulent information return, or one year after the fraudulent information return would have been discovered through the exercise of reasonable care, whichever is later.

The Committee does not want to open the door to unwarranted or frivolous actions or abusive litigation practices. The Committee is concerned, for example, about the possibility that an unfounded or frivolous action might be brought under this section by a current or former employee of an employer who is not pleased with one or more items that his or her current or former employer has included on the employee's Form W-2. Therefore, actions brought under this section will be subject to Rule 11 of the Federal Rules of Civil Procedure, relating to the imposition of sanctions in the case of unfounded or frivolous claims, to the same extent as other civil actions.

Effective date

The provision applies to fraudulent information returns filed after the date of enactment.

b. Requirement to conduct reasonable investigations of information returns (sec. 602 of the bill and sec. 6201 of the Code)

Present law

Deficiencies determined by the IRS are generally afforded a presumption of correctness.

Reasons for change

Taxpayers may encounter difficulties when a payor issues an erroneous information return and refuses to correct the information and report the change to the IRS, or when a fraudulent information return is filed.

Explanation of provision

The bill provides that, in any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return (Form 1099 or Form W-2) filed by a third party and the taxpayer has fully cooperated with the IRS, the Government has the burden of producing reasonable and probative information concerning the deficiency (in addition to the information return itself). Fully cooperating with the IRS includes (but is not limited to) the following: bringing the reasonable dispute over the item of income to the attention of the IRS within a reasonable period of time, and providing (within a reasonable period of time) access to and inspection of all witnesses, information, and documents within the control of the taxpayer (as reasonably requested by the Secretary).

Effective date

The provision is effective on the date of enactment.

7. AWARDING OF COSTS AND CERTAIN FEES

a. United States must establish that its position in a proceeding was substantially justified (sec. 701 of the bill and sec. 7430 of the Code)

Present law

Under section 7430, a taxpayer who successfully challenges a determination of deficiency by the IRS may recover attorney's fees and other administrative and litigation costs if the taxpayer qualifies as a "prevailing party." A taxpayer qualifies as a prevailing party if it: (1) establishes that the position of the United States was not substantially justified; (2) substantially prevails with respect to the amount in controversy or with respect to the most significant issue or set of issues presented; and (3) meets certain net worth and (if the taxpayer is a business) size requirements. A taxpayer must exhaust administrative remedies to be eligible to receive an award of attorney's fees.

Reasons for change

The Committee believes that it is appropriate for the IRS to demonstrate that it was substantially justified in maintaining its position when the taxpayer substantially prevails and that the IRS should be required to follow its published guidance and private guidance provided to taxpayers.

Explanation of provision

The bill provides that, once a taxpayer substantially prevails over the IRS in a tax dispute, the IRS has the burden of proof to establish that it was substantially justified in maintaining its position against the taxpayer. This will switch the current procedure which places the burden of proof on the taxpayer to establish that the IRS was not substantially justified in maintaining its position. Therefore, the successful taxpayer will receive an award of attorney's fees unless the IRS satisfies its burden of proof. The bill also establishes a rebuttable presumption that the position of the United States was not substantially justified if the IRS did not follow in the administrative proceeding (1) its published regulations, revenue rulings, revenue procedures, information releases, notices, or announcements, or (2) a private letter ruling, determination letter, or technical advice memorandum issued to the taxpayer. This provision only applies to the version of IRS guidance that is most current on the date the IRS's position was taken.

Effective date

The provision is effective for proceedings commenced after the date of enactment.

b. Increased limit on attorney's fees (sec. 702 of the bill and sec. 7430 of the Code)

Present law

Attorney's fees recoverable by prevailing parties as litigation or administrative costs was originally set at \$75 per hour.

Reasons for change

The Committee believes that these amounts should be raised and indexed for inflation.

Explanation of provision

The bill raises the statutory rate to \$110 per hour, indexed for inflation beginning after 1996.

Effective date

The provision applies to proceedings commenced after the date of enactment.

c. Failure to agree to extension not taken into account (sec. 703 of the bill and sec. 7430 of the Code)

Present law

To qualify for an award of attorney's fees, the taxpayer must have exhausted the administrative remedies available within the IRS.

Reasons for change

The IRS has taken the position in regulations that attorney's fees cannot be awarded if the taxpayer has not agreed to extend the statute of limitations. In *Minahan v. Commissioner*, 88 T.C. 492 (1987), the Tax Court held that regulation invalid insofar as it pro-

vides that a taxpayer's refusal to consent to extend the statute of limitations is to be taken into account in determining whether the taxpayer has exhausted administrative remedies available to the taxpayer.

Explanation of provision

The bill provides that any failure to agree to an extension of the statute of limitations cannot be taken into account for purposes of determining whether a taxpayer has exhausted the administrative remedies for purposes of determining eligibility for an award of attorney's fees.

Effective date

The provision applies to proceedings commenced after the date of enactment.

d. Award of litigation costs permitted in declaratory judgment proceedings (sec. 704 of the bill and sec. 7430 of the Code)

Present law

Section 7430(b)(3) denies any reimbursement for attorney's fees in all declaratory judgment actions, except those actions related to the revocation of an organization's qualification under section 501(c)(3) (relating to tax-exempt status).

Reasons for change

It is appropriate to treat declaratory judgment proceedings similar to other tax proceedings, with respect to eligibility for attorney's fees.

Explanation of provision

The bill eliminates the present-law restrictions on awarding attorney's fees in all declaratory judgment proceedings.

Effective date

The provision applies to proceedings commenced after the date of enactment.

8. MODIFICATION TO RECOVERY OF CIVIL DAMAGES FOR UNAUTHORIZED COLLECTION ACTIONS

a. Increase in limit on recovery of civil damages for unauthorized collection actions (sec. 801 of the bill and sec. 7433 of the Code)

Present law

A taxpayer may sue the United States for up to \$100,000 of damages caused by an officer or employee of the IRS who recklessly or intentionally disregards provisions of the Internal Revenue Code or the Treasury regulations promulgated thereunder in connection with the collection of Federal tax with respect to the taxpayer.

Reasons for change

The Committee believes that the cap for damages caused by IRS employees should be raised.

Explanation of provision

The bill increases the cap from \$100,000 to \$1 million.

Effective date

The provision applies to unauthorized collection actions by IRS employees that occur after the date of enactment.

- b. Court discretion to reduce award for litigation costs for failure to exhaust administrative remedies (sec. 802 of the bill and sec. 7433 of the Code)*

Present law

A taxpayer suing the United States for civil damages for unauthorized collection activities must exhaust administrative remedies to be eligible for an award.

Reasons for change

There may be circumstances in which it is inappropriate to require a taxpayer to exhaust administrative remedies.

Explanation of provision

The bill permits (but does not require) a court to reduce an award if the taxpayer has not exhausted administrative remedies.

Effective date

The provision is effective for proceedings commenced after the date of enactment.

9. MODIFICATION TO PENALTY FOR FAILURE TO COLLECT AND PAY
OVER TAX

- a. Preliminary notice requirement (sec. 901 of the bill and sec. 6672 of the Code)*

Present law

Under section 6672, a "responsible person" is subject to a penalty equal to the amount of trust fund taxes that are not collected or paid to the government on a timely basis. An individual the IRS has identified as a responsible person is permitted an administrative appeal on the question of responsibility.

Reasons for change

Some employees may not be fully aware of their personal liability under section 6672 for the failure to pay over trust fund taxes. The Committee believes that IRS could make additional efforts to assist the public in understanding its responsibilities.

Explanation of provision

The bill requires the IRS to issue a notice to an individual the IRS had determined to be a responsible person with respect to unpaid trust fund taxes at least 60 days prior to issuing a notice and demand for the penalty. The statute of limitations shall not expire before the date 90 days after the date on which the notice was

mailed. The provision does not apply if the Secretary finds that the collection of the penalty is in jeopardy.

Effective date

The provision applies to assessments made after June 30, 1996.

b. Disclosure of certain information where more than one person subject to penalty (sec. 902 of the bill and sec. 6103 of the Code)

Present law

The IRS may not disclose to a responsible person the IRS's efforts to collect unpaid trust fund taxes from other responsible persons, who may also be liable for the same tax liability.

Reasons for change

The Committee believes that it is appropriate to permit the IRS to disclose to a responsible person whether the IRS is imposing the penalty on any other responsible person, and whether the IRS has been successful in collecting the penalty against such a person.

Explanation of provision

The bill requires the IRS, if requested in writing by a person considered by the IRS to be a responsible person, to disclose in writing to that person the name of any other person the IRS has determined to be a responsible person with respect to the tax liability. The IRS is required to disclose in writing whether it has attempted to collect this penalty from other responsible persons, the general nature of those collection activities, and the amount (if any) collected. Failure by the IRS to follow this provision does not absolve any individual for any liability for this penalty.

Effective date

The provision is effective on the date of enactment.

c. Right of contribution from multiple responsible parties (sec. 903 of the bill and sec. 6672 of the code)

Present law

A responsible person may seek to recover part of the amount which he has paid to the IRS from other individuals who also may have the obligations of a responsible person but who have not yet contributed their proportionate share of their liability under section 6672. Taxpayers must pursue such claims for contribution under state law (to the extent state law permits such claims). The variations in state law sometimes make it difficult or impossible to press successful suits in state courts to force a contribution from other responsible persons.

Reasons for change

The IRS may collect this penalty from a responsible person from whom it can collect most easily, rather than from the person with the greatest culpability for the failure. It would accordingly promote fairness in the administration of the tax laws to establish a right of contribution among multiple responsible parties.

Explanation of provision

If more than one person is liable for this penalty, each person who paid the penalty is entitled to recover from other persons who are liable for the penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. This proceeding is a Federal cause of action and must be entirely separate from any proceeding involving IRS's collection of the penalty from any responsible party (including a proceeding in which the United States files a counterclaim or third-party complaint for collection of the penalty).

Effective date

The provision applies to penalties assessed after the date of enactment.

d. Board members of tax-exempt organizations (sec. 904 of the bill and sec. 6672 of the code)

Present law

Under section 6672, "responsible persons" of tax-exempt organizations are subject to a penalty equal to the amount of trust fund taxes that are not collected and paid to the Government on a timely basis.

Reasons for change

Individuals who serve on the boards of tax-exempt organizations, on a voluntary or honorary basis, are often concerned that they will be held liable for unpaid taxes of the organization as a responsible person, even though their service may be strictly voluntary in nature, and they may not be involved in the day-to-day operations and financial decisions of the organization. The Committee believes that the IRS has not made adequate efforts to clarify the rules applicable to tax-exempt organizations.

Explanation of provision

The bill clarifies that the section 6672 responsible person penalty is not to be imposed on volunteer, unpaid members of any board of trustees or directors of a tax-exempt organization to the extent such members are solely serving in an honorary capacity, do not participate in the day-to-day or financial activities of the organization, and do not have actual knowledge of the failure. The provision cannot operate in such a way as to eliminate all responsible persons from responsibility.

The bill requires the IRS to develop materials to better inform board members of tax-exempt organizations (including voluntary or honorary members) that they may be treated as responsible persons. The IRS is required to make such materials routinely available to tax-exempt organizations. The bill also requires the IRS to clarify its instructions to IRS employees on application of the responsible person penalty with regard to honorary or volunteer members of boards of trustees or directors of tax-exempt organizations.

Effective date

The provision is effective on the date of enactment.

10. MODIFICATIONS OF RULES RELATING TO SUMMONSES

a. Enrolled agents included as third-party recordkeepers (sec. 1001 of the bill and sec. 7609 of the code)

Present law

Section 7609 contains special procedures that the IRS must follow before it issues a third-party summons. A third-party summons is a summons issued to a third-party recordkeeper compelling him to provide information with respect to the taxpayer. An example of this would be a summons served on a stock brokerage house to provide data on the securities trading of the taxpayer-client.

If a third-party summons is served on a third-party recordkeeper listed in section 7609(a)(3), then the taxpayer must receive notice of the summons and have an opportunity to challenge the summons in court. Otherwise the taxpayer has no statutory right to receive notice of the summons and accordingly he will not have the opportunity to challenge it in court.

Section 7609(a)(3) lists attorneys and accountants as third-party recordkeepers, but it does not list "enrolled agents", who are authorized to practice before the IRS.

Reasons for change

Because enrolled agents are authorized to practice before the IRS in a similar manner to attorneys and accountants, they should be accorded the same status as third-party recordkeepers as are attorneys and accountants.

Explanation of provision

The bill includes enrolled agents as third-party recordkeepers.

Effective date

The provision applies to summonses issued after the date of enactment.

b. Safeguards relating to designated summonses; annual report to Congress on designated summonses (secs. 1002 and 1003 of the bill and sec. 6503 of the Code)

Present law

The period for assessment of additional tax with respect to most tax returns, corporate or otherwise, is three years. The IRS and the taxpayer can together agree to extend the period, either for a specified period of time or indefinitely. The taxpayer may terminate an indefinite agreement to extend the period by providing notice to the IRS.

During an audit, the IRS may informally request that the taxpayer provide additional information necessary to arrive at a fair and accurate audit adjustment, if any adjustment is warranted. Not all taxpayers cooperate by providing the requested information on a timely basis. In some cases the IRS seeks information by issu-

ing an administrative summons. Such a summons will not be judicially enforced unless the Government (as a practical matter, the Department of Justice) seeks and obtains an order for enforcement in Federal court. In addition, a taxpayer may petition the court to quash an administrative summons where this is permitted by statute.¹

In certain cases, the running of the assessment period is suspended during the period when the parties are in court to obtain or avoid judicial enforcement of an administrative summons. Such a suspension is provided in the case of litigation over a third-party summons (sec. 7609(e)) or litigation over a summons regarding the examination of a related party transaction. Such a suspension can also occur with respect to a corporate tax return if a summons is issued at least 60 days before the day on which the assessment period (as extended) is scheduled to expire. In this case, suspension is only permitted if the summons clearly states that it is a "designated summons" for this purpose. Only one summons may be treated as a designated summons for purposes of any one tax return. The limitations period is suspended during the judicial enforcement period of the designated summons and of any other summons relating to the same tax return that is issued within 30 days after the designated summons is issued.

Under current internal procedures of the IRS, no designated summons is issued unless first reviewed by the Office of Chief Counsel to the IRS, including review by an IRS Deputy Regional Counsel for the Region in which the examination of the corporation's return is being conducted.

Reasons for change

The Committee recognizes that issuance of a designated summons is a serious step in the examination of a tax return, given the fact that litigation over the summons would suspend the running of the period for assessing additional tax against the taxpayer under audit. The Committee believes that, in recognition of the seriousness of such a step, the IRS should be required to institute additional procedures to ensure high-level IRS review before any such summons is issued. The Committee also believes that it is important to place some restrictions on the taxpayers to whom IRS can issue a designated summons.

Explanation of provision

The bill requires that issuance of any designated summons with respect to a corporation's tax return must be preceded by review of such issuance by the Regional Counsel, Office of Chief Counsel to the IRS, for the Region in which the examination of the corporation's return is being conducted.

The bill also limits the use of a designated summons to corporations (or to any other person to whom the corporation has transferred records) that are being examined as part of the Coordinated Examination Program (CEP) or its successor. CEP audits cover about 1,600 of the largest corporate taxpayers. If a corporation

¹ Petitions to quash are permitted, for example, in connection with the examination of certain related party transactions under section 6038A(e)(4), and in the case of certain third-party summonses under section 7609(b)(2).

moves between CEP and non-CEP audit categories, only the tax years covered by the CEP may be the subject of a designated summons. The bill does not affect Code section 6038A(e)(1), which relates to a U.S. reporting corporation that acts merely as the agent of the foreign related party by receiving summonses on behalf of the foreign party.

The bill also requires that the Treasury report annually to the Congress on the number of designated summonses issued in the preceding 12 months.

Effective date

The provision applies to summonses issued after date of enactment.

II. RELIEF FROM RETROACTIVE APPLICATION OF TREASURY DEPARTMENT REGULATIONS (SEC. 1101 OF THE BILL AND SEC. 7805 OF THE CODE)

Present law

Under section 7805(b), Treasury may prescribe the extent (if any) to which regulations shall be applied without retroactive effect.

Reasons for change

The Committee believes that it is generally inappropriate for Treasury to issue retroactive regulations.

Explanation of provision

The bill provides that temporary and proposed regulations must have an effective date no earlier than the date of publication in the Federal Register or the date on which any notice substantially describing the expected contents of such regulation is issued to the public. Any regulations filed or issued within 18 months of the enactment of the statutory provision to which the regulation relates may be issued with retroactive effect. This general prohibition on retroactive regulations may be superseded by a legislative grant authorizing the Treasury to prescribe the effective date with respect to a statutory provision. The Treasury may issue retroactive temporary or proposed regulations to prevent abuse. The Treasury also may issue retroactive temporary, proposed, or final regulations to correct a procedural defect in the issuance of a regulation. Treasury may provide that taxpayers may elect to apply a temporary or proposed regulation retroactively from the date of publication of the regulation. Final regulations may take effect from the date of publication of the temporary or proposed regulation to which they relate. The provision does not apply to any regulation relating to internal Treasury Department policies, practices, or procedures. Present law with respect to rulings is unchanged.

Effective date

The provision applies with respect to regulations that relate to statutory provisions enacted on or after the date of enactment.

12. MISCELLANEOUS PROVISIONS

- a. Phone numbers of person providing payee statement required to be shown on such statement (sec. 1201 of the bill and secs. 6041, 6041A, 6042, 6044, 6045, 6049, 6050B, 6050H, 6050I, 6050J, 6050K and 6050N of the Code)*

Present law

Information returns must contain the name and address of the payor.

Reasons for change

Taxpayers often need to contact payors issuing information returns in order to resolve questions about the accuracy of the information provided to the IRS. Currently, payors are only required to provide their names and addresses on information returns. As a result, taxpayers may have difficulty in contacting the payor and resolving questions quickly.

Explanation of provision

The bill requires that information returns contain the name, address, and phone number of the information contact of the person required to make the information return. A payor may, for example, provide the phone number of the department with the relevant information. It is intended that the telephone number provide direct access to individuals with immediate resources to resolve a taxpayer's questions in an expeditious manner.

Effective date

The provision applies to statements required to be furnished after December 31, 1996 (determined without regard to any extension).

- b. Required notice to taxpayers of certain payments (sec. 1202 of the bill)*

Present law

If the IRS receives a payment without sufficient information to properly credit it to a taxpayer's account, the IRS may attempt to contact the taxpayer. If contact cannot be made, the IRS places the payment in an unidentified remittance file.

Reasons for change

If the IRS cannot associate a taxpayer's payment with a balance due, the IRS generally deposits the money and may not inform the taxpayer of the overpayment. For example, a check that is separated from a balance-due income tax return, which is subsequently lost, may not get credited to that taxpayer's account.

Explanation of provision

The bill requires the IRS to make reasonable efforts to notify, within 60 days, those taxpayers who have made payments which the IRS cannot associate with the taxpayer.

Effective date

The provision is effective on the date of enactment.

c. Unauthorized enticement of information disclosure (sec. 1203 of the bill and new sec. 7435 of the Code)

Present law

No statutory disincentive applies to IRS employees who entice a tax professional to disclose information about clients in exchange for the favorable treatment of the taxes of the professional.

Reasons for change

The Committee believes that it is improper for IRS employees to entice tax professionals into breaching their fiduciary responsibilities to their clients in exchange for favorable treatment on their own returns.

Explanation of provision

If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, the taxpayer may bring a civil action for damages against the United States in a district court of the United States. Upon a finding of liability, damages shall equal the lesser of \$500,000 or the sum of (1) actual economic damages sustained by the taxpayer as a proximate result of the information disclosure and (2) the costs of the action. These remedies shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime.

Effective date

The provision applies to actions taken after the date of enactment.

d. Annual reminders to taxpayers with outstanding delinquent accounts (sec. 1304 of the bill and new sec. 7524 of the Code)

Present law

There is no statutory requirement in the Code that the IRS send annual reminders to persons who have outstanding tax liabilities.

Reasons for change

Numerous taxpayers become delinquent in paying their tax liability. The delinquencies may occur because the person did not make enough payments through payroll withholding or quarterly estimated payments or because of an adjustment following an audit.

The IRS generally pursues larger tax deficiencies first, and then it pursues small deficiencies. Because of the limited amount of IRS resources to work collection cases, cases with smaller deficiencies may not be addressed for years. In the meantime, the taxpayer

may come to believe that the apparent lack of IRS collection activity means that it has abandoned its claim against the taxpayer. The taxpayer may be surprised when the IRS resumes collection action years later, when the 10-year statute of limitations on collections is close to expiring.

Explanation of provision

The bill requires the IRS to send taxpayers an annual reminder of their outstanding tax liabilities. The fact that a taxpayer did not receive a timely, annual reminder notice does not affect the tax liability.

Effective date

The provision requires the IRS to send annual reminder notices beginning in 1997.

e. Five-year extension of authority for undercover operations (sec. 1205 of the bill and sec. 7608 of the Code)

Present law

The Anti-Drug Abuse Act of 1988 exempted IRS undercover operations from the otherwise applicable statutory restrictions controlling the use of Government funds (which generally provide that all receipts be deposited in the general fund of the Treasury and all expenses be paid out of appropriated funds). In general, the exemption permits the IRS to "churn" the income earned by an undercover operation to pay additional expenses incurred in the undercover operation. The IRS is required to conduct a detailed financial audit of large undercover operations in which the IRS is churning funds and to provide an annual audit report to the Congress on all such large undercover operations. The exemption originally expired on December 31, 1989, and was extended by the Comprehensive Crime Control Act of 1990 to December 31, 1991. The IRS has not had the authority to churn funds from its undercover operations since 1991.

Reasons for change

Many other law enforcement agencies have churning authority. It is appropriate for IRS to have this authority as well.

Explanation of provision

The bill reinstates the IRS's offset authority under section 7608(c) from the date of enactment until January 1, 2001. The bill amends the IRS annual reporting requirement under section 7608(c)(4)(B) to require the provision of the following data: (1) the date the operation was initiated; (2) the date offsetting was approved; (3) the total current expenditures and the amount and use of proceeds of the operation; (4) a detailed description of the undercover operation projected to generate proceeds, including the potential violation being investigated, and whether the operation is being conducted under grand jury auspices; and (5) the results of the operation to date, including the results of criminal proceedings.

Effective date

The provision would be effective on the date of enactment.

f. Disclosure of returns on cash transactions (sec. 1206 of the bill and sec. 6103 of the Code)

Present law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding \$5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the IRS to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Under section 6050I, any person who receives more than \$10,000 in cash in one transaction (or two or more related transactions) in the course of a trade or business generally must file an information return (Form 8300) with the IRS specifying the name, address, and taxpayer identification number of the person from whom the cash was received and the amount of cash received.

The Anti-Drug Abuse Act of 1988 provided a special rule permitting the IRS to disclose these information returns to other Federal agencies for the purpose of administering Federal criminal statutes. The special rule originally was to expire after November 18, 1990, and was extended by the Comprehensive Crime Control Act of 1990 to November 18, 1992.

Reasons for change

Information filed on Form 8300 is very similar to information filed on Currency Transaction Reports (CTRs) under the Bank Secrecy Act. Both types of information reports should be subject to the same disclosure rules.

Explanation of provision

The bill permanently extends the special rule for disclosing Form 8300 information. Moreover, the bill permits disclosures not only to Federal agencies but also to State, local and foreign agencies and for civil, criminal and regulatory purposes (i.e., generally in the same manner as Currency Transaction Reports filed by financial institutions under the Bank Secrecy Act). Disclosure, however, is not permitted to any such agency for purposes of tax administration. The bill also (1) extends the dissemination policies and guidelines under section 6103 to people having access to Form 8300 information, and (2) applies section 6103 sanctions to persons having access to Form 8300 information that disclose this information without proper authorization.

Effective date

The provision is effective on the date of enactment.

g. Disclosure of returns and return information to designee of taxpayer (sec. 1207 of the bill and sec. 6103 of the Code)

Present law

Under present law, the IRS is authorized to disclose the return of any taxpayer, or return information pertaining to a taxpayer, to such person(s) as the taxpayer has designated in a written request.

Reasons for change

The IRS's move to a paperless system depends on the ease and functionality of electronic communication systems, e.g., telephones, facsimile machines, computers, communications networks, etc.

Explanation of provision

The bill deletes the word "written" from the requirement that "written consent" from the taxpayer is necessary for the disclosure of taxpayer information to a designated third party. Allowing the IRS to adopt alternatives to the written request requirement will expedite such changes and facilitate the development and implementation of Tax System Modernization projects. It is anticipated that the IRS will continue to utilize its regulatory authority to impose reasonable restrictions on the form in which a request is made, and that the IRS will in no event accept an unconfirmed verbal request.

Effective date

The provision is effective on the date of enactment.

h. Report on netting of interest on overpayments and liabilities (sec. 1208 of the bill)

Present law

If any portion of a tax is satisfied through the crediting of an overpayment of tax, no interest is imposed on that portion of the tax for any period during which, if the credit had not been made, interest would have been allowable.

The Tax Reform Act of 1986 first implemented an interest rate differential. The underpayment rate was set 1 percent higher than the overpayment rate. The Conference Report to the Tax Reform Act of 1986 stated:

[t]o the extent a portion of tax due is satisfied by a credit of an overpayment, no interest is imposed on that portion of the tax. Consequently, if an underpayment of \$1,000 occurs in year 1, and an overpayment of \$1,000 occurs in year 2, no interest is imposed in year 2 because of the rule of section 6601(f). The IRS can at present net many of these offsetting overpayments and underpayments. Nevertheless, the IRS will require a transition period during which to coordinate differential interest rates . . . [t]he Secretary of the Treasury may prescribe regulations providing for netting of tax underpayments and overpayments through the period ending three years after the date of enactment of the bill. By that date, the IRS should have im-

plemented the most comprehensive netting procedures that are consistent with sound administrative practice.

The Omnibus Budget Reconciliation Act of 1990 increased the underpayment rate on certain large corporate underpayments to 3 percent higher than the overpayment rate. The Conference Report stated:

Under present law, the Secretary has the authority to credit the amount of any overpayment against any liability under the Code * * * to the extent a portion of tax due is satisfied by a credit of an overpayment, no interest is imposed on that portion of the tax * * *. The Secretary should implement the most comprehensive crediting procedures under section 6402 that are consistent with sound administrative practice.

The General Agreement on Tariffs and Trade (GATT) reduced the overpayment rate on certain corporate tax refunds. The legislative history of the GATT legislation stated that:

The Secretary of the Treasury should implement the most comprehensive crediting procedures under section 6402 that are consistent with sound administrative practice, and should do so as rapidly as is practicable.

Reasons for change

The Committee believes that it is important for the Committee to understand in detail how the IRS has implemented netting procedures to date. Congress has never adopted differential interest rates, or increased the amount of such differential, without at the same time also encouraging the IRS to implement comprehensive interest netting procedures. The Committee is concerned that the IRS has failed to implement comprehensive interest netting procedures and is interested in learning whether the delay stems from technical difficulties or substantive questions about the scope of such interest netting procedures.

Explanation of provision

The bill requires the Secretary of the Treasury to conduct a study of the manner in which the IRS has implemented the netting of interest on overpayments and underpayments and the policy and administrative implications of global netting. The Treasury is required to hold a public hearing to receive comments from any interested party prior to submitting the report of its study to the tax writing committees.

Effective date

The report is due six months after the date of enactment. The Committee understands that the Treasury has already announced that it will conduct this study and will complete it by October 1, 1996. The Committee anticipates that the Treasury will meet its own deadline.

i. Expenses of detection of underpayments and fraud (sec. 1209 of the bill and sec. 7623 of the Code)

Present law

Secretary may, pursuant to regulations, pay rewards for information leading to the detection and punishment of violations of the Internal Revenue laws.

Reasons for change

The Committee believes that improvements should be made to this program.

Explanation of provision

The bill clarifies that rewards may be paid for information relating to civil violations, as well as criminal violations. The bill also provides that the rewards are to be paid out of the proceeds of amounts (other than interest) collected by reason of the information provided. The bill also requires an annual report on the rewards program.

Effective date

The provision is effective six months after the date of enactment.

j. Use of private delivery services for timely-mailing-as-timely-filing rule (sec. 1210 of the bill and sec. 7502 of the Code)

Present law

The Code sets forth the rules for determining when a return, payment of tax, or other document required to be filed with the IRS is deemed to be filed or delivered on a timely basis (sec. 7502). In a recent case interpreting this section (*V.L. Correia*, 58 F.3d 468 (1995)), the U.S. Court of Appeals for the 9th Circuit upheld the Tax Court's ruling that the section's so-called "timely-mailing as timely-filing" rule does not apply to private delivery companies. Although the Appeals Court agreed that there is a legitimate policy rationale for extending the rule to private delivery companies, it concluded that only Congress, and not the courts, had the power to make such a change.

Reasons for change

There are many private delivery companies operating today which meet the U.S. Postal Service's ability to deliver documents quickly and securely. Every year, many taxpayers needlessly run afoul of the present-law rule because they make a reasonable assumption that using a private delivery service is adequate to show timely filing of their tax returns.

Explanation of provision

The Secretary of the Treasury is given authority to expand the "timely-mailing as timely-filing" rule to include a designated delivery service. A designated delivery service must be designated as such by the Secretary. The Secretary may designate a delivery service only if it meets the following criteria: (1) it is available to the general public; (2) it is at least as timely and reliable on a reg-

ular basis as the United States mail; (3) it satisfies recordkeeping criteria; and (4) it meets any additional criteria as the Secretary may prescribe. The provision also gives the Secretary similar authority with respect to equivalents for United States certified or registered mail.

Effective date

The provision is effective on the date of enactment.

k. Reports on misconduct by IRS employees (sec. 1211 of the bill)

Present law

The IRS Inspection Division investigates allegations of criminal misconduct or serious violations of the "Standards of Ethical Conduct for Employees of the Executive Branch" (5 CFR 2635) by IRS employees. In addition, IRS management addresses other types of taxpayer complaints relating to inappropriate behavior by IRS employees.

Reasons for change

Criminal actions resulting from Inspection Service investigations are a matter of public record, and press releases are issued in conjunction with the U.S. Attorney's office about such matters in accordance with exceptions that exist to tax disclosure and privacy constraints. However, information about administrative disciplinary actions are generally not available to the public. This may lead to a public perception that allegations of misconduct by IRS employees are not investigated or that misconduct goes unpunished.

Explanation of provision

The bill requires the IRS to make an annual report to the tax-writing committees, beginning June 1, 1997, on all categories of instances involving allegations of misconduct by IRS employees, arising either from internally identified cases or from taxpayer or third-party initiated complaints. The report must identify by IRS Region and primary activity involved (e.g., examination, collection, etc.), the nature of the misconduct or complaint, the number of instances received by category, and the disposition of these instances. This would include, but not be limited to, the following categories: number of employees reprimanded, terminated, or prosecuted; instances dismissed because of a finding that proper procedures were followed; and those initiated but not yet resolved. Instances covered by this process must include both written complaints of misconduct and those received by telephone through management channels. Each annual report will cover instances of misconduct that occurred during the preceding calendar year. Disposition of complaints not resolved by the time the report is prepared must be included in the report for the year in which resolution occurs.

Effective date

The first report is due by June 1, 1997.

B. Revenue Offsets

1. APPLICATION OF FAILURE-TO-PAY PENALTY TO SUBSTITUTE RETURNS (SEC. 1301 OF THE BILL AND SEC. 6651 OF THE CODE)

Present law

Section 6651(a)(2) provides that the IRS may assess a penalty for failure to pay tax from the due date of the return until the tax is paid. If no return is filed by the taxpayer and the IRS files a substitute return under section 6020, the tax on which the penalty is measured is considered a deficiency assessable under section 6212 or 6213, and the failure to pay penalty begins to accumulate 10 days after the IRS sends the taxpayer a notice and demand for payment of the tax.

Reasons for change

Under the current penalty system, there is an inequity between voluntarily filed delinquent returns and substitute returns. Taxpayers who file delinquent returns must pay a failure to file penalty from the due date of the return, whereas the taxpayer who forces the IRS to utilize a substitute return is not assessed the penalty until billed by the IRS.

Explanation of provision

The bill applies the failure to pay penalty to substitute returns in the same manner as the penalty applies to delinquent filers.

Effective date

The provision applies in the case of any return the due date for which (determined without regard to extensions) is after the date of enactment.

2. EXCISE TAXES ON AMOUNTS OF PRIVATE EXCESS BENEFITS (SECS. 1311-1314 OF THE BILL AND SECS. 501, 6032, 6104, 6662, 6685 AND NEW SECS. 4958, 6116, AND 6716 OF THE CODE)

Present law

Private inurement

Charities.—Section 501(c)(3) specifically conditions tax-exempt status for all organizations described in that section on the requirement that no part of the net earnings of the organization inures to the benefit of any private shareholder or individual (the so-called "private inurement test").

Social welfare organizations.—A tax-exempt social welfare organization described in section 501(c)(4) must be organized on a non-profit basis and must be operated exclusively for the promotion of social welfare. In contrast to section 501(c)(3), however, there is no specific statutory rule in section 501(c)(4) prohibiting the net earnings of a social welfare organization described in section 501(c)(4) from inuring to the benefit of a private shareholder or individual.²

² Even where no prohibited private inurement exists, however, more than incidental private benefits conferred on individuals may result in the organization not being operated "exclusively"

Continued

Other organizations.—Other tax-exempt organizations, such as labor and agricultural organizations described in section 501(c)(5) and business leagues described in section 501(c)(6) are subject to the private inurement test, as a result of explicit statutory language or Treasury Department regulations.

Sanctions for private inurement and other violations of exemption standards

Organizations described in section 501(c)(3) are classified as either public charities or private foundations. Penalty excise taxes may be imposed under the Code when a public charity makes political expenditures (sec. 4955) or excessive lobbying expenditures (secs. 4911 and 4912). However, the Code generally does not provide for the imposition of penalty excise taxes in cases where a 501(c)(3) public charity or a section 501(c)(4) social welfare organization engages in a transaction that results in private inurement. In such cases, the only sanction that specifically is authorized under the Code is revocation of the organization's tax-exempt status. A transaction engaged in by a private foundation (but not a public charity) is subject to special penalty excise taxes under the Code if the transaction is a prohibited "self-dealing" transaction (sec. 4941) or does not accomplish a charitable purpose (sec. 4945).

Filing and public disclosure rules

Tax-exempt organizations (other than churches and certain small organizations) are required to file an annual information return (Form 990) with the Internal Revenue Service ("IRS"), setting forth the organization's items of gross income and expenses attributable to such income, disbursements for tax-exempt purposes, plus certain other information for the taxable year. Private foundations are required to allow public inspection at the foundation's principal office of their current annual information return. Other tax-exempt organizations, including public charities, are required to allow public inspection at the organization's principal office (and certain regional or district offices) of their annual information returns for the three most recent taxable years (sec. 6104(e)). The Code also requires that tax-exempt organizations allow public inspection of the organization's application to the IRS for recognition of tax-exempt status, the IRS determination letter, and certain related documents. In addition, upon written request to the IRS, members of the general public are permitted to inspect annual information returns of tax-exempt organizations and applications for recognition of tax-exempt status (and related documents) at the National Office of the IRS in Washington, D.C. A person making such a written request is notified by the IRS when the material is available for inspection at the National Office, where notes may be taken of the material open for inspection, photographs taken with the person's own equipment, or copies of such material obtained from the IRS for a fee (Treas. Reg. secs. 301.6104(a)-6 and 301.6104(b)-1).

Section 6652(c)(1)(A) provides that a tax-exempt organization that fails to file a complete and accurate Form 990 is subject to a

for an exempt purpose. See, e.g., *American Campaign Academy v. Commissioner*, 92 T.C. 1059 (1989).

penalty of \$10 for each day during which such failure continues (with a maximum penalty with respect to any one return of the lesser of \$5,000 or five percent of the organization's gross receipts for the year). Section 6652(c)(1)(C) provides that tax-exempt organizations that fail to make certain annual returns and applications for exemption available for public inspection are subject to a penalty of \$10 for each day the failure continues (with a maximum penalty with respect to any one return not to exceed \$5,000, and without limitation with respect to applications). In addition, section 6685 provides a penalty for willfully failing to make an annual return or application available for public inspection of \$1,000 per return or application.

Reasons for change

To ensure that the advantages of tax-exempt status ultimately benefit the community and not private individuals, the bill extends the present-law section 501(c)(3) private inurement prohibition to nonprofit organizations described in section 501(c)(4) and provides for intermediate sanctions that may be imposed when nonprofit organizations described in section 501(c)(3) or 501(c)(4) engage in transactions with certain insiders that result in private inurement. The bill also enhances the oversight and public accountability of nonprofit organizations through additional reporting of information by nonprofit organizations to the Internal Revenue Service (IRS) and increased public access to documents filed by such organizations with the IRS.

Explanation of provision

Extend private inurement prohibition to social welfare organizations

The bill amends section 501(c)(4) explicitly to provide that a social welfare organization or other organization described in that section would be eligible for tax-exempt status only if no part of its net earnings inures to the benefit of any private shareholder or individual.

In addition, the bill provides that the private inurement rule will not be violated solely because of an allocation or return of net margins or capital to the members of a nonprofit association or organization that operates on a cooperative basis in accordance with its incorporating statute and bylaws (substantially as in existence on the date of enactment) and was determined to be exempt from Federal income tax under section 501(c)(4) prior to the date of enactment. However, such cooperative organizations are subject to the general private inurement proscription with respect to any other type of transaction.

Effective date.—This provision generally is effective on September 14, 1995. However, under a special transition rule, the provision does not apply to inurement occurring prior to January 1, 1997, if such inurement results from a written contract that was binding on September 13, 1995, and at all times thereafter before such inurement occurred, and the terms of which have not materially changed.

Intermediate sanctions for excess benefit transactions

The bill imposes penalty excise taxes as an intermediate sanction in cases where organizations exempt from tax under section 501(c)(3) or 501(c)(4) (other than private foundations, which are subject to a separate penalty regime under current law) engage in an "excess benefit transaction." In such cases, intermediate sanctions may be imposed on certain disqualified persons (i.e., insiders) who improperly benefit from an excess benefit transaction and on organization managers who participate in such a transaction knowing that it is improper.

An "excess benefit transaction" is defined as: (1) any transaction in which an economic benefit is provided to, or for the use of, any disqualified person if the value of the economic benefit provided directly by the organization (or indirectly through a controlled entity³) to such person exceeds the value of consideration (including performance of services) received by the organization for providing such benefit; and (2) to the extent provided in Treasury Department regulations, any transaction in which the amount of any economic benefit provided to, or for the use of, any disqualified person is determined in whole or in part by the revenues of the organization, provided that the transaction constitutes prohibited inurement under present-law section 501(c)(3) or under section 501(c)(4), as amended. Thus, "excess benefit transactions" subject to excise taxes include transactions in which a disqualified person engages in a non-fair-market-value transaction with an organization or receives unreasonable compensation, as well as financial arrangements (to the extent provided in Treasury regulations) under which a disqualified person receives payment based on the organization's income in a transaction that violates the present-law private inurement prohibition. The Treasury Department is instructed to issue prompt guidance providing examples of revenue-sharing arrangements that violate the private inurement prohibition; such guidance shall be applicable on a prospective basis.⁴

Existing tax-law standards (see sec. 162) apply in determining reasonableness of compensation and fair market value.⁵ In applying such standards, the Committee intends that the parties to a transaction are entitled to rely on a rebuttable presumption of reasonableness with respect to a compensation arrangement with a disqualified person if such arrangement was approved by a board of directors or trustees (or committee thereof) that: (1) was composed entirely of individuals unrelated to and not subject to the

³ A tax-exempt organization cannot avoid the private inurement proscription by causing a controlled entity to engage in an excess benefit transaction. Thus, for example, if a tax-exempt organization causes its taxable subsidiary to pay excessive compensation to an individual who is a disqualified person with respect to the parent organization, such transaction would be an excess benefit transaction.

⁴ Under present law, certain revenue sharing arrangements have been determined not to constitute private inurement (see e.g., GCM 36263; GCM 38905; and GCM 39674) and, under the proposal, it would continue to be the case that not all revenue sharing arrangements would be improper private inurement. However, the Committee intends no inference that Treasury or the Internal Revenue Service are bound by any particular prior unpublished rulings in this area.

⁵ In this regard, the Committee intends that an individual need not necessarily accept reduced compensation merely because he or she renders services to a tax-exempt, as opposed to a taxable, organization. Cf. Treas. Reg. sec. 58.4941(d)-3(c)(1).

control of the disqualified person(s) involved in the arrangement;⁶ (2) obtained and relied upon appropriate data as to comparability (e.g., compensation levels paid by similarly situated organizations, both taxable and tax-exempt, for functionally comparable positions; the location of the organization, including the availability of similar specialties in the geographic area; independent compensation surveys by nationally recognized independent firms; or actual written offers from similar institutions competing for the services of the disqualified person); and (3) adequately documented the basis for its determination (e.g., the record includes an evaluation of the individual whose compensation was being established and the basis for determining that the individual's compensation was reasonable in light of that evaluation and data).⁷ If these three criteria are satisfied, penalty excise taxes could be imposed under the proposal only if the IRS develops sufficient contrary evidence to rebut the probative value of the evidence put forth by the parties to the transaction (e.g., the IRS could establish that the compensation data relied upon by the parties was not for functionally comparable positions or that the disqualified person, in fact, did not substantially perform the responsibilities of such position). A similar rebuttable presumption would arise with respect to the reasonableness of the valuation of property sold or otherwise transferred (or purchased) by an organization to (or from) a disqualified person if the sale or transfer (or purchase) is approved by an independent board that uses appropriate comparability data and adequately documents its determination. The Secretary of the Treasury and IRS are instructed to issue guidance in connection with the reasonableness standard that incorporates this presumption.

The bill specifically provides that the payment of personal expenses and benefits to or for the benefit of disqualified persons, and non-fair-market-value transactions benefiting such persons, would be treated as compensation only if it is clear that the organization intended and made the payments as compensation for services. In determining whether such payments or transactions are, in fact, compensation, the relevant factors include whether the appropriate decision-making body approved the transfer as compensation in accordance with established procedures and whether the organization and the recipient reported the transfer (except in the case of non-taxable fringe benefits) as compensation on the relevant forms (i.e., the organization's Form 990, the Form W-2 or Form 1099 provided by the organization to the recipient, the recipient's Form 1040, and other required returns).⁸

⁶ A reciprocal approval arrangement whereby an individual approves compensation of the disqualified person, and the disqualified person, in turn, approves the individual's compensation does not satisfy the independence requirement.

⁷ The fact that a State or local legislative or agency body may have authorized or approved a particular compensation package paid to a disqualified person is not determinative of the reasonableness of compensation paid for purposes of the excise tax penalties provided for by the proposal. Similarly, such authorization or approval is not determinative of whether a revenue sharing arrangement violates the private inurement prescription.

⁸ With the exception of nontaxable fringe benefits described in present-law section 132 and other types of nontaxable transfers such as employer-provided health benefits and contributions to qualified pension plans, an organization cannot demonstrate at the time of an IRS audit that it clearly indicated its intent to treat economic benefits provided to a disqualified person as compensation for services merely by claiming that such benefits may be viewed as part of the disqualified person's total compensation package. Rather, the organization would be required to provide substantiation that is contemporaneous with the transfer of economic benefits at issue.

Consistent with the rule that payment of personal expenses and benefits to or for the benefit of disqualified persons and nonfair-market value transactions benefiting such persons are treated as compensation only if it is clear that the organization intended and made the payments as compensation for services, any reimbursements by the organization of excise tax liability are treated as an excess benefit unless they are included in the disqualified person's compensation during the year the reimbursement is made. The total compensation package, including the amount of any reimbursement, is subject to the reasonableness requirement. Similarly, the payment by an applicable tax-exempt organization of premiums for an insurance policy providing liability insurance to a disqualified person for excess benefit taxes is an excess benefit transaction unless such premiums are treated as part of the compensation paid to such disqualified person.⁹

"Disqualified person" means any individual who is in a position to exercise substantial influence over the affairs of the organization, whether by virtue of being an organization manager or otherwise.¹⁰ In addition, "disqualified persons" include certain family members and 35-percent owned entities¹¹ of a disqualified person, as well as any person who was a disqualified person at any time during the five-year period prior to the transaction at issue. A person having the title of "officer, director, or trustee" does not automatically have the status of a disqualified person.¹² In addition, the Secretary of Treasury has authority to promulgate rules exempting broad categories of individuals from the category of "disqualified persons" (e.g., full-time bona fide employees who receive economic benefits of less than a threshold amount or persons who have taken a vow of poverty).

A disqualified person who benefits from an excess benefit transaction is subject to a first-tier penalty tax equal to 25 percent of the amount of the excess benefit (i.e., the amount by which a transaction differs from fair market value, the amount of compensation exceeding reasonable compensation, or (under Treasury regulations) the amount of a prohibited transaction based on the organi-

⁹In addition, because individuals may be both members of, and disqualified persons with respect to, a non-exclusive applicable tax-exempt organization (e.g., a museum or neighborhood civic organization) and receive certain benefits (e.g., free admission, discounted gift shop purchases) in their capacity as members (rather than in their capacity as disqualified persons), the Committee expects that the Treasury Department will provide guidance clarifying that such membership benefits may be excluded from consideration under the private inurement proscription and intermediate sanction rules.

¹⁰Under the bill, a person could be in a position to exercise substantial influence over a tax-exempt organization despite the fact that such person is not an employee of (and receives no compensation directly from) a tax-exempt organization, but is formally an employee of (and is directly compensated by) a subsidiary—even a taxable subsidiary—controlled by the parent tax-exempt organization.

¹¹Family members are determined under present-law section 4946(d), except that such members also would include siblings (whether by whole or half blood) of the individual, and spouses of such siblings. "35-percent owned entities" mean corporations in which disqualified persons own stock possessing more than 35 percent of the combined voting power, as well as partnerships and trusts or estates in which disqualified persons own more than 35 percent of the profits interest or beneficial interest. As under present-law section 4946(a), the term "combined voting power" includes voting power represented by holdings of voting stock, actual or constructive, but does not include voting rights held only as a director or trustee. See Treas. Reg. sec. 63.4946-1(a)(6).

¹²The IRS has issued a general counsel memorandum indicating that all physicians are considered "insiders" for purposes of applying the private inurement proscription. The Committee intends that physicians will be disqualified persons only if they are in a position to exercise substantial influence over the affairs of an organization.

zation's gross or net income). Organization managers who participate in an excess benefit transaction knowing that it is an improper transaction are subject to a first-tier penalty tax of 10 percent of the amount of the excess benefit (subject to a maximum penalty of \$10,000).¹³

Additional, second-tier taxes may be imposed on a disqualified person if there is no correction of the excess benefit transaction within a specified time period.¹⁴ In such cases, the disqualified person is subject to a penalty tax equal to 200 percent of the amount of excess benefit. For this purpose, the term "correction" means undoing the excess benefit to the extent possible and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

The intermediate sanctions for "excess benefit transactions" may be imposed by the IRS in lieu of (or in addition to) revocation of an organization's tax-exempt status.¹⁵ If more than one disqualified person or manager is liable for a penalty excise tax, then all such persons are jointly and severally liable for such tax. As under current law, a three-year statute of limitations applies, except in the case of fraud (sec. 6501). Under the bill, the IRS has authority to abate the excise tax penalty (under present-law section 4962) if it is established that the violation was due to reasonable cause and not due to willful neglect and the transaction at issue was corrected within the specified period.

To prevent avoidance of the penalty excise taxes in cases of private inurement of assets of a previously tax-exempt organization, the bill provides that an organization will be treated as an applicable tax-exempt organization subject to the excise taxes on excess benefit transactions if, at any time during the 5-year period preceding the transaction, it was a tax-exempt organization described in section 501(c)(3) or 501(c)(4), or a successor to such an organization.

Effective date.—The provision generally applies to excess benefit transactions occurring on or after September 14, 1995. The provision does not apply, however, to any benefits arising out of a transaction pursuant to a written contract which was binding on September 13, 1995, and at all times thereafter before such benefits arose, and the terms of which have not materially changed.

In addition, the Committee intends that parties to transactions entered into after September 13, 1995, and before January 1, 1997, are entitled to rely on the rebuttable presumption of reasonableness if, within a reasonable period (e.g., 90 days) after entering into the compensation package, the parties satisfy the three criteria

¹³In determining who is an organization manager, the Committee intends that principles similar to those set forth in regulations issued under sections 4946 and 4955 with respect to final authority or responsibility for an expenditure be applied. (See Treas. Reg. secs. 53.4946-1(f)(iii), 53.4946-1(f)(2), 53.4955-1(b)(2)(ii)(B), and 53.4955-1(b)(2)(iii)).

¹⁴Correction must be made on or prior to the earlier of (1) the date of mailing of a notice of deficiency under section 6212 with respect to the first-tier penalty excise tax imposed on the disqualified person, or (2) the date on which such tax is assessed.

¹⁵In general, the intermediate sanctions are the sole sanction imposed in those cases in which the excess benefit does not rise to a level where it calls into question whether, on the whole, the organization functions as a charitable or other tax-exempt organization. In practice, revocation of tax-exempt status, with or without the imposition of excise taxes, would occur only when the organization no longer operates as a charitable organization.

that give rise to the presumption. After December 31, 1996, the rebuttable presumption should arise only if the three criteria are satisfied prior to payment of the compensation (or, to the extent provided by the Secretary of the Treasury, within a reasonable period thereafter).

Additional filing and public disclosure rules

Reporting of information with respect to certain disqualified persons, excise tax penalties and excess benefit transactions.—Tax-exempt organizations are required to disclose on their Form 990 such information with respect to disqualified persons as the Secretary of the Treasury may prescribe. The Committee intends that this requirement is not intended to limit the Secretary's authority under section 6033(a)(1) to require information on annual returns filed by exempt organizations for the purpose of carrying out the internal revenue laws. In addition, exempt organizations are required to disclose on their Form 990 such information as the Secretary of the Treasury may require with respect to "excess benefit transactions" (described above) and any other excise tax penalties paid during the year under present-law sections 4911 (excess lobbying expenditures), 4912 (disqualifying lobbying expenditures), or 4955 (political expenditures), including the amount of the excise tax penalties paid with respect to such transactions, the nature of the activity, and the parties involved.¹⁶

Furnishing copies of documents.—The bill also provides that a tax-exempt organization that is subject to the public inspection rules of present-law section 6104(e)(1) (i.e., any tax-exempt organization, other than a private foundation, that files a Form 990) is required to comply with requests made in writing or in person from individuals who seek a copy of the organization's Form 990 or the organization's application for recognition of tax-exempt status and certain related documents. Upon such a request, the organization is required to supply copies without charge other than a reasonable fee for reproduction and mailing costs. If so requested, copies must be supplied of the Forms 990 for any of the organization's three most recent taxable years. If the request for copies is made in person, then the organization must immediately provide such copies. If the request for copies is made in writing, then copies must be provided within 30 days. However, an organization may be relieved of its obligation to provide copies if, in accordance with regulations to be promulgated by the Secretary of the Treasury, (1) the organization has made the requested documents widely available or (2) the Secretary of the Treasury determined, upon application by the organization, that the organization was subject to a harassment campaign such that a waiver of the obligation to provide copies would be in the public interest.

Penalties for failure to file timely or complete return.—The section 6652(c)(1)(A) penalty imposed on a tax-exempt organization that either fails to file a Form 990 in a timely manner or fails to include

¹⁶The penalties applicable to failure to file a timely, complete, and accurate return apply for failure to comply with these requirements. In addition, the Committee intends that the IRS implement its plan to require additional Form 990 reporting regarding (1) changes to the governing board or the certified accounting firm, (2) such information as the Treasury Secretary may require relating to professional fundraising fees paid by the organization, and (3) aggregate payments (by related entities) in excess of \$100,000 to the highest-paid employees.

all required information on a Form 990 is increased from the present-law level of \$10 for each day the failure continues (with a maximum penalty with respect to any one return of the lesser of \$5,000 or five percent of the organization's gross receipts) to \$20 for each day the failure continues (with a maximum penalty with respect to any one return of the lesser of \$10,000 or five percent of the organization's gross receipts). Under the bill, organizations with annual gross receipts exceeding \$1 million are subject to a penalty under section 6652(c)(1)(A) of \$100 for each day the failure continues (with a maximum penalty with respect to any one return of \$50,000). As under present law, no penalty may be imposed under section 6652(c)(1)(A) if it were shown that the failure to file a complete return was due to reasonable cause (sec. 6652(c)(3)).

Penalties for failure to allow public inspection or provide copies.—The section 6652(c)(1)(C) penalty imposed on tax-exempt organizations that fail to allow public inspection or provide copies of certain annual returns or applications for exemption is increased from the present-law level of \$10 per day (with a maximum of \$5,000) to \$20 per day (with a maximum of \$10,000). In addition, the section 6685 penalty for willful failure to allow public inspections or provide copies is increased from the present-law level of \$1,000 to \$5,000.

Effective date.—The public inspection provisions governing tax-exempt organizations generally apply to requests made no earlier than 60 days after the date on which the Treasury Department publishes the anti-harassment regulations required under the provisions. However, the Committee expects that organizations will comply voluntarily with the public inspection provisions prior to the issuance of such regulations. The provisions regarding the reporting on annual returns of excise tax penalties and excess benefit transactions are effective for returns with respect to taxable years beginning on or after the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made concerning the votes of the Committee in its consideration of the bill, H.R. 2337.

Motion to report the bill

The bill, H.R. 2337, as amended, was ordered favorably reported by voice vote on March 21, 1996, with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 2337, as reported.

The bill, as amended, is estimated to have the following effects on budget receipts for fiscal years 1996–2002:

ESTIMATED BUDGET EFFECTS OF H.R. 2337 AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS, FISCAL YEARS 1996-2002

(In Millions of Dollars)

Provision	Effective	1996	1997	1998	1999	2000	2001	2002	1996-02
I. Taxpayer Bill of Rights 2 (Titles I-XIII)									
1. Establishment of position of Taxpayer Advocate	DOE					No Revenue Effect			(5)
2. Expansion of authority to issue Taxpayer Assistance Orders	DOE					No Revenue Effect			(4)
3. Notification of reasons for termination of installment agreements	6 mo DOE					No Revenue Effect			(5)
4. Administrative review of termination of installment agreements	1/1/97					No Revenue Effect			(5)
5. Expansion of authority to abate interest	DOE	(-)	(-)	(-)	(-)	(-)	(-)	(-)	(5)
6. Review of IRS failure to abate interest	DOE	(-)	(-)	(-)	(-)	(-)	(-)	(-)	(5)
7. Extension of interest-free period for payment of tax	6/30/96	-2	-7	-8	-8	-8	-9	-9	-51
8. Abate penalty for failure to deposit payroll tax	DOE	-23	-1	-1	-1	-1	-1	-1	-29
a. On-budget	DOE	-38	-1	-1	-1	-1	-1	-1	-44
b. Off-budget (not reflected in net total)	DOE	(-)	(-)	(-)	(-)	(-)	(-)	(-)	(5)
9. Studies of joint return-related issues	DOE					No Revenue Effect			(5)
10. Joint return may be made after separate returns without full payment of tax	DOE					No Revenue Effect			(5)
11. Disclosure of collection activities	DOE					No Revenue Effect			(5)
12. Whistle-blowers of lien	1/1/97					No Revenue Effect			(5)
13. Return denied property	1/1/97					No Revenue Effect			(5)
14. Increase levy exemption	DOE	(-)	(-)	(-)	(-)	(-)	(-)	(-)	(5)
15. Offers-in-compromise	DOE					No Revenue Effect			(5)
16. Civil damages for fraud/joint filing of information return	DOE	-3	-6	-6	-6	-6	-8	-8	-44
17. Requirement to conduct reasonable investigation	DOE	-7	2	-2	-3	-3	-3	-3	-18
18. United States must establish that position in proceeding was substantially justified	DOE	-1	-1	-1	-1	-1	-1	-1	-7
19. Increased limit on attorney fees	DOE					No Revenue Effect			(5)
20. Failure to agree to extension not taken into account	DOE					No Revenue Effect			(5)
21. Award of litigation costs permitted in declaratory judgment proceedings	DOE	(-)	(-)	(-)	(-)	(-)	(-)	(-)	(5)
22. Increase in limit on recovery of civil damages	DOE	-3	-3	-3	-3	-3	-3	-3	-21
23. Court discretion to reduce award for litigation costs	DOE	-1	-1	-1	-1	-1	-1	-1	-7
24. Preliminary notice requirement	6/30/96					No Revenue Effect			(5)
25. Disclosure of certain information where more than one person liable for penalty	DOE					No Revenue Effect			(5)

26. Right of contribution where more than one person liable for penalty.	DOE						No Revenue Effect	
27. Volunteer board members of tax-exempt organizations excluded from penalty.	DOE						No Revenue Effect	
28. Enrolled agents included as third-party recordkeepers	DOE	(1)	(1)	(1)	(1)	(1)	(1)	(2)
29. Safeguards relating to designated summonses	DOE	(1)	(1)	(1)	(1)	(1)	(1)	(2)
30. Report on designated summonses	DOE						No Revenue Effect	
31. Relief from retroactive application of Treasury Department regulations with 18 month safe-harbor.	DOE		-1	-1	-1	-1	-1	-21
32. Plume number of person providing payroll statements	1/1/97						No Revenue Effect	
33. Required notice of certain payments	DOE						No Revenue Effect	
34. Unauthorized entitlement of information disclosure	DOE						No Revenue Effect	
35. Annual reminders to taxpayers with delinquent accounts	3/1/97	(2)	(2)	(2)	(2)	(2)	(2)	(4)
36. Reinstatement of authority for undercover operations through 12/31/00.	DOE						No Revenue Effect	
37. Disclosure of returns concerning cash transactions	DOE						No Revenue Effect	
38. Disclosure of returns and return information to designee of taxpayer.	DOE						No Revenue Effect	
39. Study of netting of interest on overpayments and liabilities	DOE						No Revenue Effect	
40. Expenses of detection of underpayments and fraud	6 mo DOE						Negligible Revenue Effect	
41. Use of private delivery services for "timely-mailing-as-time-filing" rule.	DOE						No Revenue Effect	
42. Reports on misconduct by IRS employees	DOE						No Revenue Effect	
Subtotal, Taxpayer Bill of Rights 2		35	22	26	27	-28	-30	-138
								-198

ESTIMATED BUDGET EFFECTS OF H.R. 2337 AS APPROVED BY THE COMMITTEE ON WAYS AND MEANS, FISCAL YEARS 1996-2002 - Continued

(Millions of Dollars)

Provisions	Effective	1996	1997	1998	1999	2000	2001	2002	1996-00	1996-02
II. REVENUE OFFSETS (Title XIII)										
1. Apply failure to pay penalty to substitute returns	10/1/96	1	3	29	30	32	33	35	95	163
2. Intermediate sanctions for certain tax-exempt organizations	9/14/96 1/1/96	4	4	4	5	5	5	6	22	33
Subtotal: Revenue Offsets		5	7	33	35	37	38	41	117	196
Net Totals		-30	-15	7	8	9	8	11	-21	-2

Source: Joint Committee on Taxation.

* Loss of less than \$1 million.
 * Loss of less than \$5 million.
 * Gain of less than \$1 million.
 * Gain of less than \$5 million.
 * Gain of less than \$10 million.
 * Tax rules provided by the Congressional Budget Office (CBO).

Note: Credits may not add to totals due to rounding.
 Legend for "Effective": column DOE=day of enactment, & no DOE=6 months after date of enactment.

B. Statement Regarding New Budget Authority and Tax Expenditures

In compliance with subdivision (B) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the bill, as amended, involves no new or increased budget authority or tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with subdivision (C) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office (CBO), the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 27, 1996.

HON. BILL ARCHER,
Chairman, Committee on Ways and Means, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office and the Joint Committee on Taxation (JCT) have reviewed H.R. 2337, the "Taxpayer Bill of Rights," as ordered reported by the House Committee on Ways and Means on March 21, 1996. The JCT estimates that this bill would decrease governmental receipts by \$30 million in fiscal year 1996 and by \$21 million over fiscal years 1996 through 2000. The revenue effects of H.R. 2337 are summarized in the table below. Please refer to the enclosed table for a more detailed estimate of the bill.

REVENUE EFFECTS OF H.R. 2337
(By fiscal year, in billions of dollars)

	1996	1997	1998	1999	2000	2001	2002
Projected revenues under current law ^a	1417.581	1475.165	1546.076	1617.969	1697.155	1786.356	1829.335
Proposed changes	0.030	0.015	0.007	0.008	0.009	0.008	0.011
Projected revenues under H.R. 2337	1417.651	1475.180	1546.083	1617.977	1697.164	1786.364	1829.345

a. Includes the revenue effects of P.L. 104-7 (H.R. 831), and P.L. 104-137 (H.R. 2778).

In accordance with the requirements of Public Law 104-4, the Unfunded Mandates Reform Act of 1995, JCT has determined that the provisions of the bill contain one unfunded intergovernmental mandate and three unfunded private sector mandates. These provisions would impose direct costs on the private sector of less than \$100 million in each year and on governmental units of less than \$50 million in each year from 1996-2002. Please refer to the enclosed letter for a more detailed account of these provisions.

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting receipts or direct spending through 1998. Because H.R. 2337 would affect receipts, pay-as-you-go procedures would apply to the bill. These effects are summarized in the table below.

PAY-AS-YOU-GO CONSIDERATIONS

(By fiscal year, in millions of dollars)

	1996	1997	1998
Changes in receipts	30	- 15	7
Changes in outlays	(2)		

If you wish further details, please feel free to contact me or your staff may wish to contact Stephanie Weiner.

Sincerely,

JUNE E. O'NEILL, *Director.*

U.S. CONGRESS,
JOINT COMMITTEE ON TAXATION,
Washington, DC, March 27, 1996.

Mrs. JUNE O'NEILL,
Director, Congressional Budget Office, U.S. Congress, Washington, DC.

DEAR MRS. O'NEILL: We have reviewed H.R. 2337, the "Taxpayer Bill of Rights 2," as amended and passed by the House Committee on Ways and Means on March 21, 1996. In accordance with the requirements of Public Law 104-4, the Unfunded Mandates Reform Act of 1995 (the "Unfunded Mandates Act"), we have determined that the provisions of the bill contain one unfunded intergovernmental mandate and three unfunded private sector mandates.

Section 1201 of the bill requires that information returns include the phone number of the information contact. This is in addition to other information (such as name and address of the payor) that is already required to be included on information returns. The bill does not require that any additional information returns be filed. This provision would impose direct costs on the private sector of less than \$100 million in each year and on governmental units of less than \$50 million in each year 1996-2002.

Section 1311 of the bill extends the private inurement prohibition currently applicable to organization exempt from tax under Code section 501(c)(3) to organizations exempt from tax under Code section 501(c)(4). Section 1312 of the bill requires tax-exempt organizations to disclose on their annual information returns certain information with respect to disqualified persons, excise tax penalties, and excess benefit transactions. This information would be in addition to the information currently required to be provided. These provisions would impose direct costs on the private sector of less than \$100 million in each year 1996-2002.

If you would like to discuss this matter in further detail, please feel free to contact me. Thank you for your cooperation in this matter.

Sincerely,

KENNETH J. KIES, *Chief of Staff.*

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to subdivision (A) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight activities concerning protection of taxpayer rights and needed revenue offsets (applying failure-to-pay penalty to substitute returns and intermediate sanctions for certain tax-exempt organizations) that the Committee concluded that it is appropriate and timely to enact the provisions contained in the bill as amended.

B. Summary of Findings and Recommendations of the Committee on Government Reform and Oversight

With respect to subdivision (D) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in the bill.

C. Inflationary Impact Statement

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill are not expected to have an overall inflationary impact on prices and costs in the national economy. As indicated in Part IV.A of this report, the estimated net budget effect of the bill, as amended, is projected to be a revenue reduction of only \$2 million over the fiscal year period, 1996–2002.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

The Committee has determined that the provisions of the bill contain one intergovernmental mandate and three unfunded private sector mandates.

Section 1201 of the bill requires that information returns include the telephone number of the information contact of the person required to make the information return. Currently, payors are only required to provide their names and addresses on information returns. This information would be in addition to the information that is currently required to be provided, but the bill would not require that any additional information returns be filed. The Committee believes that inclusion of the telephone number of the payor's information contact will make it easier for taxpayers to resolve questions about the accuracy of the information provided to the IRS on the information return. This provision would impose direct costs on the private sector of less than \$100 million in each year and on governmental units of less than \$50 million in each year 1996–2002.

Section 1311 of the bill extends the private inurement prohibition currently applicable to organizations exempt from tax under Code section 501(c)(3) to organizations exempt from tax under Code section 501(c)(4). Section 1312 of the bill requires tax-exempt organizations to disclose on their annual information returns certain information with respect to disqualified persons, excise taxes on amounts of private excess benefits, and excess benefit transactions. This information would be in addition to the information currently required to be provided, but the bill would not require that any additional information returns be filed. The Committee believes that inclusion of this information will enhance the oversight and public accountability of nonprofit organizations. These provisions would impose direct costs on the private sector of less than \$100 million in each year 1996–2002.

E. Applicability of House Rule XXI5(c)

Rule XXI5(c) of the Rules of the House of Representatives provides that “No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting.” The Committee has carefully reviewed the provisions of the bill to determine whether any of these provisions constitute a Federal income tax rate increase within the meaning of the House rules. It is the opinion of the Committee that there is no provision in the bill that constitutes a Federal income tax rate increase within the meaning of House rule XXI5(c) or (d).

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * *

Subtitle A—Income Taxes

* * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * *

Subchapter F—Exempt Organizations

PART I—GENERAL RULE

* * * * *

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) * * *

* * * * *

(c) **LIST OF EXEMPT ORGANIZATIONS.**—The following organizations are referred to in subsection (a):

(1) * * *

* * * * *

(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(B) *Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.*

* * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * *

CHAPTER 42—PRIVATE EXEMPT FOUNDATIONS AND CERTAIN OTHER TAX-EXEMPT ORGANIZATIONS

* * * * *

[SUBCHAPTER D. Abatement of first and second tier taxes in certain cases.]

SUBCHAPTER D. Failure by certain charitable organizations to meet certain qualification requirements.

SUBCHAPTER E. Abatement of first and second tier taxes in certain cases.

* * * * *

Subchapter C—Political Expenditures of Section 501(c)(3) Organizations

* * * * *

SEC. 4955. TAXES ON POLITICAL EXPENDITURES OF SECTION 501(c)(3) ORGANIZATIONS.

(a) * * *

* * * * *

(e) **COORDINATION WITH [SECTION 4945] SECTIONS 4945 AND 4958.**—If tax is imposed under this section with respect to any political expenditure, such expenditure shall not be treated as a taxable expenditure for purposes of section 4945 or an excess benefit for purposes of section 4958.

* * * * *

**Subchapter D—Failure by Certain Charitable Organizations
To Meet Certain Qualification Requirements**

Sec. 4958. Taxes on excess benefit transactions.

SEC. 4958. TAXES ON EXCESS BENEFIT TRANSACTIONS.

(a) INITIAL TAXES.—

(1) ON THE DISQUALIFIED PERSON.—There is hereby imposed on each excess benefit transaction a tax equal to 25 percent of the excess benefit. The tax imposed by this paragraph shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(2) ON THE MANAGEMENT.—In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any organization manager in the excess benefit transaction, knowing that it is such a transaction, a tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any organization manager who participated in the excess benefit transaction.

(b) ADDITIONAL TAX ON THE DISQUALIFIED PERSON.—In any case in which an initial tax is imposed by subsection (a)(1) on an excess benefit transaction and the excess benefit involved in such transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 200 percent of the excess benefit involved. The tax imposed by this subsection shall be paid by any disqualified person referred to in subsection (f)(1) with respect to such transaction.

(c) EXCESS BENEFIT TRANSACTION; EXCESS BENEFIT.—For purposes of this section—

(1) EXCESS BENEFIT TRANSACTION.—

(A) IN GENERAL.—The term “excess benefit transaction” means any transaction in which an economic benefit is provided by an applicable tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit. For purposes of the preceding sentence, an economic benefit shall not be treated as consideration for the performance of services unless such organization clearly indicated its intent to so treat such benefit.

(B) EXCESS BENEFIT.—The term “excess benefit” means the excess referred to in subparagraph (A).

(2) AUTHORITY TO INCLUDE CERTAIN OTHER PRIVATE INUREMENT.—To the extent provided in regulations prescribed by the Secretary, the term “excess benefit transaction” includes any transaction in which the amount of any economic benefit provided to or for the use of a disqualified person is determined in whole or in part by the revenues of 1 or more activities of the organization but only if such transaction results in inurement not permitted under paragraph (3) or (4) of section 501(c), as the case may be. In the case of any such transaction, the excess benefit shall be the amount of the inurement not so permitted.

(d) **SPECIAL RULES.**—For purposes of this section—

(1) **JOINT AND SEVERAL LIABILITY.**—If more than 1 person is liable for any tax imposed by subsection (a) or subsection (b), all such persons shall be jointly and severally liable for such tax.

(2) **LIMIT FOR MANAGEMENT.**—With respect to any 1 excess benefit transaction, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed \$10,000.

(e) **APPLICABLE TAX-EXEMPT ORGANIZATION.**—For purposes of this subchapter, the term “applicable tax-exempt organization” means—

(1) any organization which (without regard to any excess benefit) would be described in paragraph (3) or (4) of section 501(c) and exempt from tax under section 501(a), and

(2) any organization which was described in paragraph (1) at any time during the 5-year period ending on the date of the transaction.

Such term shall not include a private foundation (as defined in section 509(a)).

(f) **OTHER DEFINITIONS.**—For purposes of this section—

(1) **DISQUALIFIED PERSON.**—The term “disqualified person” means, with respect to any transaction—

(A) any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization,

(B) a member of the family of an individual described in subparagraph (A), and

(C) a 35-percent controlled entity.

(2) **ORGANIZATION MANAGER.**—The term “organization manager” means, with respect to any applicable tax-exempt organization, any officer, director, or trustee of such organization (or any individual having powers or responsibilities similar to those of officers, directors, or trustees of the organization).

(3) **35-PERCENT CONTROLLED ENTITY.**—

(A) **IN GENERAL.**—The term “35-percent controlled entity” means

(i) a corporation in which persons described in subparagraph (A) or (B) of paragraph (1) own more than 35 percent of the total combined voting power,

(ii) a partnership in which such persons own more than 35 percent of the profits interest, and

(iii) a trust or estate in which such persons own more than 35 percent of the beneficial interest.

(B) **CONSTRUCTIVE OWNERSHIP RULES.**—Rules similar to the rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of this paragraph.

(4) **FAMILY MEMBERS.**—The members of an individual’s family shall be determined under section 4946(d); except that such members also shall include the brothers and sisters (whether by the whole or half blood) of the individual and their spouses.

(5) **TAXABLE PERIOD.**—The term “taxable period” means, with respect to any excess benefit transaction, the period beginning with the date on which the transaction occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a)(1), or

(B) the date on which the tax imposed by subsection (a)(1) is assessed.

(6) **CORRECTION.**—The terms “correction” and “correct” mean, with respect to any excess benefit transaction, undoing the excess benefit to the extent possible, and taking any additional measures necessary to place the organization in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

Subchapter [D] E—Abatement of First and Second Tier Taxes in Certain Cases

* * * * *

SEC. 4963. DEFINITIONS.

(a) **FIRST TIER TAX.**—For purposes of this subchapter, the term “first tier tax” means any tax imposed by subsection (a) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975.

(b) **SECOND TIER TAX.**—For purposes of this subchapter, the term “second tier tax” means any tax imposed by subsection (b) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975.

(c) **TAXABLE EVENT.**—For purposes of this subchapter, the term “taxable event” means any act (or failure to act) giving rise to liability for tax under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975.

Subtitle F—Procedure and Administration

* * * * *

CHAPTER 61—INFORMATION AND RETURNS

* * * * *

Subchapter A—Returns and Records

* * * * *

PART II—TAX RETURNS OR STATEMENTS

* * * * *

Subpart B—Income Tax Returns

* * * * *

SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

(a) * * *

(b) **JOINT RETURN AFTER FILING SEPARATE RETURN.**—

(1) * * *

(2) LIMITATIONS FOR MAKING OF ELECTION.—The election provided for in paragraph (1) may not be made—

[(A)] unless there is paid in full at or before the time of the filing of the joint return the amount shown as tax upon such joint return; or]

[(B)] (A) after the expiration of 3 years from the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse); or

[(C)] (B) after there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court within the time prescribed in section 6213; or

[(D)] (C) after either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

[(E)] (D) after either spouse has entered into a closing agreement under section 7121 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 7122.

* * * * *

PART III—INFORMATION RETURNS

* * * * *

Subpart A—Information Concerning Persons Subject to Special Provisions

* * * * *

SEC. 6033. RETURNS BY EXEMPT ORGANIZATIONS.

(a) * * *

(b) CERTAIN ORGANIZATIONS DESCRIBED IN SECTION 501(c)(3).—Every organization described in section 501(c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary may by forms or regulations prescribe, setting forth—

(1) * * *

* * * * *

(9) such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in section 501(c) (other than paragraph (3) thereof) or section 527 as the Secretary may require to prevent—

(A) diversion of funds from the organization's exempt purpose, or

(B) misallocation of revenues or expenses, [and]

(10) the respective amounts (if any) of the taxes paid by the organization during the taxable year under the following provisions:

(A) section 4911 (relating to tax on excess expenditures to influence legislation),

(B) section 4912 (relating to tax on disqualifying lobbying expenditures of certain organizations), and

(C) section 4955 (relating to taxes on political expenditures of section 501(c)(3) organizations),

(11) the respective amounts (if any) of the taxes paid by the organization, or any disqualified person with respect to such organization, during the taxable year under section 4958 (relating to taxes on private excess benefit from certain charitable organizations),

(12) such information as the Secretary may require with respect to any excess benefit transaction (as defined in section 4958),

(13) such information with respect to disqualified persons as the Secretary may prescribe, and

[(10)] (14) such other information for purposes of carrying out the internal revenue laws as the Secretary may require.

* * * * *

(f) **CERTAIN ORGANIZATIONS DESCRIBED IN SECTION 501(c)(4).**—Every organization described in section 501(c)(4) which is subject to the requirements of subsection (a) shall include on the return required under subsection (a) the information referred to in paragraphs (11), (12) and (13) of subsection (b) with respect to such organization.

[(f)] (g) **CROSS REFERENCE.**—

For provisions relating to statements, etc., regarding exempt status of organizations, see section 6001.

* * * * *

Subpart B—Information Concerning Transactions With Other Persons

* * * * *

SEC. 6041. INFORMATION AT SOURCE.

(a) * * *

* * * * *

(d) **STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.**—Every person required to make a return under subsection (a) shall furnish to each person with respect to whom such a return is required a written statement showing—

(1) the [name and address] name, address, and phone number of the information contact of the person required to make such return, and

* * * * *

SEC. 6041A. RETURNS REGARDING PAYMENTS OF REMUNERATION FOR SERVICES AND DIRECT SALES.

(a) * * *

* * * * *

(e) **STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE FURNISHED.**—Every per-

son required to make a return under subsection (a) or (b) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the [name and address] *name, address, and phone number of the information contact* of the person required to make such return, and * * *

SEC. 6042. RETURNS REGARDING PAYMENTS OF DIVIDENDS AND CORPORATE EARNINGS AND PROFITS.

(a) * * *

* * * * *

(c) **STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.**—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the [name and address] *name, address, and phone number of the information contact* of the person required to make such return, and

* * * * *

SEC. 6044. RETURNS REGARDING PAYMENTS OF PATRONAGE DIVIDENDS.

(a) * * *

* * * * *

(e) **STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.**—Every cooperative required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the [name and address] *name, address, and phone number of the information contact* of the cooperative required to make such return, and

* * * * *

SEC. 6045. RETURNS OF BROKERS.

(a) * * *

(b) **STATEMENTS TO BE FURNISHED TO CUSTOMERS.**—Every person required to make a return under subsection (a) shall furnish to each customer whose name is required to be set forth in such return a written statement showing—

(1) the [name and address] *name, address, and phone number of the information contact* of the person required to make such return, and

* * * * *

SEC. 6049. RETURNS REGARDING PAYMENTS OF INTEREST.

(a) * * *

* * * * *

(c) **STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.**—

(1) **IN GENERAL.**—Every person required to make a return under subsection (a) shall furnish to each person whose name

is required to be set forth in such return a written statement showing—

(A) the [name and address] *name, address, and phone number of the information contact* of the person required to make such return, and

* * * * *

SEC. 6050B. RETURNS RELATING TO UNEMPLOYMENT COMPENSATION.

(a) * * *

(b) **Statements To Be Furnished to Individuals With Respect to Whom Information is Required.**—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the [name and address] *name, address, and phone number of the information contact* of the person required to make such return, and

* * * * *

SEC. 6050H. RETURNS RELATING TO MORTGAGE INTEREST RECEIVED IN TRADE OR BUSINESS FROM INDIVIDUALS.

(a) * * *

* * * * *

(d) **STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.**—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

(1) the [name and address] *name, address, and phone number of the information contact* of the person required to make such return, and

* * * * *

SEC. 6050I. RETURNS RELATING TO CASH RECEIVED IN TRADE OR BUSINESS, ETC.

(a) * * *

* * * * *

(e) **STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.**—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the [name and address] *name, address, and phone number of the information contact* of the person required to make such return, and

* * * * *

SEC. 6050J. RETURNS RELATING TO FORECLOSURES AND ABANDONMENTS OF SECURITY.

(a) * * *

* * * * *

(e) **Statements To Be Furnished to Persons With Respect to Whom Information is Required To Be Furnished.**—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing the [name and address] *name, address, and phone number of the information contact* of the person required to make such return. The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

SEC. 6050K. RETURNS RELATING TO EXCHANGES OF CERTAIN PARTNERSHIP INTERESTS.

(a) * * *

(b) **STATEMENTS TO BE FURNISHED TO TRANSFEROR AND TRANSFEREE.**—Every partnership required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the [name and address] *name, address, and phone number of the information contact* of the partnership required to make such return, and

SEC. 6050N. RETURNS REGARDING PAYMENTS OF ROYALTIES.

(a) * * *

(b) **STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS FURNISHED.**—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

(1) the [name and address] *name, address, and phone number of the information contact* of the person required to make such return, and

* * * * *

Subchapter B—Miscellaneous Provisions

* * * * *

SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) * * *

* * * * *

(c) **DISCLOSURE OF RETURNS AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER.**—The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a [written request for or consent to such disclosure] *request for or consent to such disclosure*, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to

such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration.

* * * * *

(e) DISCLOSURE TO PERSONS HAVING MATERIAL INTEREST.

(1) * * *

* * * * *

(8) *DISCLOSURE OF COLLECTION ACTIVITIES WITH RESPECT TO JOINT RETURN.*—If any deficiency of tax with respect to a joint return is assessed and the individuals filing such return are no longer married or no longer reside in the same household, upon request in writing by either of such individuals, the Secretary shall disclose in writing to the individual making the request whether the Secretary has attempted to collect such deficiency from such other individual, the general nature of such collection activities, and the amount collected. The preceding sentence shall not apply to any deficiency which may not be collected by reason of section 6502.

(9) *DISCLOSURE OF CERTAIN INFORMATION WHERE MORE THAN 1 PERSON SUBJECT TO PENALTY UNDER SECTION 6672.*—If the Secretary determines that a person is liable for a penalty under section 6672(a) with respect to any failure, upon request in writing of such person, the Secretary shall disclose in writing to such person—

(A) the name of any other person whom the Secretary has determined to be liable for such penalty with respect to such failure, and

(B) whether the Secretary has attempted to collect such penalty from such other person, the general nature of such collection activities, and the amount collected.

* * * * *

(i) DISCLOSURE TO FEDERAL OFFICERS OR EMPLOYEES FOR ADMINISTRATION OF FEDERAL LAWS NOT RELATING TO TAX ADMINISTRATION.—

(1) * * *

* * * * *

[(8) *DISCLOSURE OF RETURNS FILED UNDER SECTION 60501.*—The Secretary may, upon written request, disclose returns filed under section 60501 to officers and employees of any Federal agency whose official duties require such disclosure for the administration of Federal criminal statutes not related to tax administration.]

* * * * *

(l) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

(1) * * *

* * * * *

(15) *DISCLOSURE OF RETURNS FILED UNDER SECTION 60501.*—The Secretary may, upon written request, disclose to officers and employees of—

(A) any Federal agency,

(B) any agency of a State or local government, or

(C) any agency of the government of a foreign country,

information contained on returns filed under section 6050I. Any such disclosure shall be made on the same basis, and subject to the same conditions, as apply to disclosures of information on reports filed under section 5313 of title 31, United States Code; except that no disclosure under this paragraph shall be made for purposes of the administration of any tax law.

* * * * *

(p) PROCEDURE AND RECORDKEEPING.—

(1) * * *

* * * * *

(3) RECORDS OF INSPECTION AND DISCLOSURE.—

(A) System of recordkeeping.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1), (3)(A), or (4), (i)(4), [(7)(A)(ii), or (8)] or (7)(A)(ii), (k)(1), (2), or (6), (l)(1), (4)(B), (5), (7), (8), (9), (10), or (11), (12), (13), [or (14)] (14), or (15), (m) or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

* * * * *

(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(6), (i)(1), (2), (3), [(5), or (8)] or (5), (j)(1) or (2), (l)(1), (2), (3), (5), (10), (11), (13), or (14) or (o)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), [(i)(3)(B)(i) or (8)] (i)(3)(B)(i), or (l)(6), (7), (8), (9), [or (12)] (12), or (15) shall, as a condition for receiving returns or return information

(A) * * *

* * * * *

(F) upon completion of use of such returns or return information—

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), (7), (8), or (9) return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable

in any manner and furnish a written report to the Secretary describing such manner,

(ii) in the case of an agency described in subsections (h)(2), (h)(6), (i)(1), (2), (3), [(5), or (8)] or (5), (j)(1) or (2), (l)(1), (2), (3), (5), (10), or (11), (12), (13), [or (14)] (14), or (15), or (o)(1), or the General Accounting Office, either—

(I) * * *

* * * * *

SEC. 6104. PUBLICITY OF INFORMATION REQUIRED FROM CERTAIN EXEMPT ORGANIZATIONS AND CERTAIN TRUSTS.

(a) * * *

* * * * *

(e) PUBLIC INSPECTION OF CERTAIN ANNUAL RETURNS AND APPLICATIONS FOR EXEMPTION.—

(1) ANNUAL RETURNS.

[(A) IN GENERAL.—During the 3-year period beginning on the filing date, a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of the organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office.]

(A) IN GENERAL.—During the 3-year period beginning on the filing date—

(i) a copy of the annual return filed under section 6033 (relating to returns by exempt organizations) by any organization to which this paragraph applies shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and, if such organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office, and

(ii) upon request of an individual made at such principal office or such a regional or district office, a copy of such annual return shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

The request described in clause (ii) must be made in person or in writing. If the request under clause (ii) is made in person, such copy shall be provided immediately and, if made in writing, shall be provided within 30 days.

* * * * *

(2) APPLICATION FOR EXEMPTION.—

(A) IN GENERAL.—If—

(i) an organization described in subsection (c) or (d) of section 501 is exempt from taxation under section 501(a), and

(ii) such organization filed an application for recognition of exemption under section 501, a copy of such application (together with a copy of any papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application) shall be made available by the organization for inspection during regular business hours by any individual at the principal office of the organization and, if the organization regularly maintains 1 or more regional or district offices having 3 or more employees, at each such regional or district office (and, upon request of an individual made at such principal office or such a regional or district office, a copy of the material requested to be available for inspection under this subparagraph shall be provided (in accordance with the last sentence of paragraph (1)(A)) to such individual without charge other than reasonable fee for any reproduction and mailing costs).

* * * * *

(3) *LIMITATION.*—Paragraph (1)(A)(ii) (and the corresponding provision of paragraph (2)) shall not apply to any request if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available, or, the Secretary determines, upon application by an organization, that such request is part of a harassment campaign and that compliance with such request is not in the public interest.

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CHAPTER 62—TIME AND PLACE FOR PAYING TAX

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Subchapter A—Place and Due Date for Payment of Tax

* * * * *

SEC. 6159. AGREEMENTS FOR PAYMENT OF TAX LIABILITY IN IN- STALMENTS.

(a) * * *

(b) **EXTENT TO WHICH AGREEMENTS REMAIN IN EFFECT.**—

(1) * * *

* * * * *

¶(3) **SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.**—

[(A) **IN GENERAL.**—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.

[(B) NOTICE.—Action may be taken by the Secretary under subparagraph (A) only if—

[(i) notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

[(ii) such notice includes the reasons why the Secretary believes a significant change in the financial condition of the taxpayer has occurred.]

(3) *SUBSEQUENT CHANGE IN FINANCIAL CONDITIONS.*—If the Secretary makes a determination that the financial condition of a taxpayer with whom the Secretary has entered into an agreement under subsection (a) has significantly changed, the Secretary may alter, modify, or terminate such agreement.

* * * * *

(5) *NOTICE REQUIREMENTS.*—The Secretary may not take any action under paragraph (2), (3), or (4) unless—

(A) a notice of such action is provided to the taxpayer not later than the day 30 days before the date of such action, and

(B) such notice includes an explanation why the Secretary intends to take such action.

The preceding sentence shall not apply in any case in which the Secretary believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(c) *ADMINISTRATIVE REVIEW.*—The Secretary shall establish procedures for an independent administrative review of terminations of installment agreements under this section for taxpayers who request such a review.

* * * * *

CHAPTER 63—ASSESSMENT

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Subchapter A—In General

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SEC. 6201. ASSESSMENT AUTHORITY.

(a) * * *

* * * * *

(d) *REQUIRED REASONABLE VERIFICATION OF INFORMATION RETURNS.*—In any court proceeding, if a taxpayer asserts a reasonable dispute with respect to any item of income reported on an information return filed with the Secretary under subpart B or C of part III of subchapter A of chapter 61 by a third party and the taxpayer has fully cooperated with the Secretary (including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer as reasonably requested by the Secretary), the Secretary shall have the burden of producing reasonable and probative information concerning such deficiency in addition to such information return.

[(d)] (e) DEFICIENCY PROCEEDINGS.—For special rules applicable to deficiencies of income, estate, gift, and certain excise taxes, see subchapter B.

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Subchapter B—Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

* * * * *

SEC. 6313. RESTRICTIONS APPLICABLE TO DEFICIENCIES; PETITION TO TAX COURT.

(a) * * *

* * * * *

(e) SUSPENSION OF FILING PERIOD FOR CERTAIN EXCISE TAXES.—The running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to investments which jeopardize charitable purpose), 4945 (relating to taxes on taxable expenditures), 4951 (relating to taxes on self-dealing), or 4952 (relating to taxes on taxable expenditures), 4955 (relating to taxes on political expenditures), 4958 (relating to private excess benefit), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions) shall be suspended for any period during which the Secretary has extended the time allowed for making correction under section 4963(e).

* * * * *

CHAPTER 64—COLLECTION

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Subchapter C—Lien for Taxes

* * * * *

SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

(a) * * *

* * * * *

(j) WITHDRAWAL OF NOTICE IN CERTAIN CIRCUMSTANCES.—

(1) IN GENERAL. *The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that—*

(A) *the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,*

(B) *the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,*

(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer.

(2) NOTICE TO CREDIT AGENCIES, ETC.—Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe.

* * * * *

Subchapter D—Seizure of Property for Collection of Taxes

* * * * *

SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) ENUMERATION.—There shall be exempt from levy—

(1) WEARING APPAREL AND SCHOOL BOOKS.—Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) FUEL, PROVISIONS, FURNITURE, AND PERSONAL EFFECTS.—[If the taxpayer is the head of a family, so] So much of the fuel, provisions, furniture, and personal effects in [his household] the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed [\$1,650 (\$1,550 in the case of levies issued during 1989)] \$2,500 in value;

(3) BOOKS AND TOOLS OF A TRADE, BUSINESS, OR PROFESSION.—So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate [\$1,100 (\$1,050 in the case of levies issued during 1989)] \$1,250, in value;

* * * * *

(f) INFLATION ADJUSTMENT.—

(1) IN GENERAL.—In the case of any calendar year beginning after 1997, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting "calendar year 1996" for "calendar year 1992" in subparagraph (B) thereof.

(2) *ROUNDING.*—If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.

* * * * *

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.

(a) * * *

* * * * *

(d) *RETURN OF PROPERTY IN CERTAIN CASES.*—If—

(1) any property has been levied upon, and

(2) the Secretary determines that—

(A) the levy on such property was premature or otherwise not in accordance with administrative procedures of the Secretary,

(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the levy was imposed by means of installment payments, unless such agreement provides otherwise,

(C) the return of such property will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the Taxpayer Advocate, the return of such property would be in the best interests of the taxpayer (as determined by the Taxpayer Advocate) and the United States,

the provisions of subsection (b) shall apply in the same manner as if such property had been wrongly levied upon, except that no interest shall be allowed under subsection (c).

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CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

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Subchapter A—Procedure in General

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SEC. 6404. ABATEMENTS.

(a) * * *

* * * * *

(e) **[ASSESSMENTS]** *ABATEMENT OF INTEREST ATTRIBUTABLE TO UNREASONABLE ERRORS AND DELAYS BY INTERNAL REVENUE SERVICE.*—

(1) *IN GENERAL.*—In the case of any assessment of interest on—

(A) any deficiency attributable in whole or in part to any *unreasonable* error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act, or

(B) any payment of any tax described in section 6212(a) to the extent that any *unreasonable* error or delay in such payment is attributable to such an officer or employee

being erroneous or dilatory in performing a ministerial or managerial act,
 the Secretary may abate the assessment of all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

* * * * *

(g) REVIEW OF DENIAL OF REQUEST FOR ABATEMENT OF INTEREST.—

(1) IN GENERAL.—The Tax Court shall have jurisdiction over any action brought by a taxpayer who meets the requirements referred to in section 7430(c)(4)(A)(ii) to determine whether the Secretary's failure to abate interest under this section was an abuse of discretion, and may order an abatement, if such action is brought within 180 days after the date of the mailing of the Secretary's final determination not to abate such interest.

(2) SPECIAL RULES.—

(A) DATE OF MAILING.—Rules similar to the rules of section 6213 shall apply for purposes of determining the date of the mailing referred to in paragraph (1).

(B) RELIEF.—Rules similar to the rules of section 6512(b) shall apply for purposes of this subsection.

(C) REVIEW.—An order of the Tax Court under this subsection shall be reviewable in the same manner as a decision of the Tax Court, but only with respect to the matters determined in such order.

* * * * *

CHAPTER 66—LIMITATIONS

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Subchapter A—Limitations on Assessment and Collection

* * * * *

SRC, 6601. SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.

(a) * * *

* * * * *

[(k)] (j) EXTENSION IN CASE OF CERTAIN SUMMONSES.—

(1) IN GENERAL.—If any designated summons is issued by the Secretary [with respect to any return of tax by a corporation] to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable year (or other period) for which such corporation is being examined under the coordinated examination program (or any successor program) of the Internal Revenue Service, the running of any period of limita-

tions provided in section 6501 on the assessment of such tax shall be suspended—

(A) * * *

* * * * *

(2) DESIGNATED SUMMONS.—For purposes of this subsection—

(A) IN GENERAL.—The term “designated summons” means any summons issued for purposes of determining the amount of any tax imposed by this title if—

(i) the issuance of such summons is preceded by a review of such issuance by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted,

[(i)] (ii) such summons is issued at least 60 days before the day on which the period prescribed in section 6501 for the assessment of such tax expires (determined with regard to extensions), and

[(ii)] (iii) such summons clearly states that it is a designated summons for purposes of this subsection.

[(1)] (k) CROSS REFERENCES.—

For suspension in case of—

* * * * *

CHAPTER 67—INTEREST

* * * * *

Subchapter A—Interest on Underpayments

* * * * *

SEC. 6601. INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT, OF TAX.

(a) * * *

* * * * *

(e) APPLICABLE RULES.—Except as otherwise provided in this title—

(1) * * *

(2) INTEREST ON PENALTIES, ADDITIONAL AMOUNTS, OR ADDITIONS TO THE TAX.—

(A) IN GENERAL.—Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under section 6651(a)(1), or 6653 or under part II of subchapter A of chapter 68) only if such assessable penalty, additional amount, or addition to the tax is not paid within **10** days from the date of notice and demand therefor *21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000)*, and in such case interest shall be imposed only

for the period from the date of the notice and demand to the date of payment.

* * * * *

[(3) PAYMENTS MADE WITHIN 10 DAYS AFTER NOTICE AND DEMAND.—If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand. **]**

(3) PAYMENTS MADE WITHIN SPECIFIED PERIOD AFTER NOTICE AND DEMAND.—If notice and demand is made for payment of any amount and if such amount is paid within 21 calendar days (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

* * * * *

CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax and Additional Amounts

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PART I—GENERAL PROVISIONS

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SEC. 6651. FAILURE TO FILE TAX RETURN OR TO PAY TAX.

(a) **ADDITION TO THE TAX.**—In case of failure—

(1) * * *

* * * * *

(3) to pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b)) within [10 days of the date of the notice and demand therefor] *21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds \$100,000)*, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction

thereof during which such failure continues, not exceeding 25 percent in the aggregate.

* * * * *

(g) *TREATMENT OF RETURNS PREPARED BY SECRETARY UNDER SECTION 6020(b).*—In the case of any return made by the Secretary under section 6020(b)—

(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a).

SEC. 6852. FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.

(a) * * *

* * * * *

(c) *RETURNS BY EXEMPT ORGANIZATIONS AND BY CERTAIN TRUSTS.*—

(1) *ANNUAL RETURNS UNDER SECTION 6033.*—

(A) *PENALTY ON ORGANIZATION.*—In the case of—

(i) a failure to file a return required under section 6033 (relating to returns by exempt organizations) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), or

(ii) a failure to include any of the information required to be shown on a return filed under section 6033 or to show the correct information,

there shall be paid by the exempt organization ~~[\$10]~~ \$20 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 return shall not exceed the lesser of ~~[\$5,000]~~ \$10,000 or 5 percent of the gross receipts of the organization for the year. In the case of an organization having gross receipts exceeding \$1,000,000 for any year, with respect to the return required under section 6033 for such year, the first sentence of this subparagraph shall be applied by substituting "\$100" for "\$20" and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed \$50,000.

* * * * *

SEC. 6656. FAILURE TO MAKE DEPOSIT OF TAXES OR OVERSTATEMENT OF DEPOSITS.

(a) * * *

* * * * *

(c) *EXCEPTION FOR FIRST-TIME DEPOSITORS OF EMPLOYMENT TAXES.*—The Secretary may waive the penalty imposed by subsection (a) on a person's inadvertent failure to deposit any employment tax if—

(1) such person meets the requirements referred to in section 7430(c)(4)(A)(ii),

(2) such failure occurs during the 1st quarter that such person was required to deposit any employment tax, and

(3) the return of such tax was filed on or before the due date. For purposes of this subsection, the term "employment taxes" means the taxes imposed by subtitle C.

(d) **AUTHORITY TO ABATE PENALTY WHERE DEPOSIT SENT TO SECRETARY.**—The Secretary may abate the penalty imposed by subsection (a) with respect to the first time a depositor is required to make a deposit if the amount required to be deposited is inadvertently sent to the Secretary instead of to the appropriate government depository.

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Subchapter B—Assessable Penalties

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PART I—GENERAL PROVISIONS

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SEC. 6672. FAILURE TO COLLECT AND PAY OVER TAX, OR ATTEMPT TO EVADE OR DEFEAT TAX.

(a) * * *

(b) **PRELIMINARY NOTICE REQUIREMENT.**—

(1) **IN GENERAL.**—No penalty shall be imposed under subsection (a) unless the Secretary notifies the taxpayer in writing by mail to an address as determined under section 6212(b) that the taxpayer shall be subject to an assessment of such penalty.

(2) **TIMING OF NOTICE.**—The mailing of the notice described in paragraph (1) shall precede any notice and demand of any penalty under subsection (a) by at least 60 days.

(3) **STATUTE OF LIMITATIONS.**—If a notice described in paragraph (1) with respect to any penalty is mailed before the expiration of the period provided by section 6501 for the assessment of such penalty (determined without regard to this paragraph), the period provided by such section for the assessment of such penalty shall not expire before the later of—

(A) the date 90 days after the date on which such notice was mailed, or

(B) if there is a timely protest of the proposed assessment, the date 30 days after the Secretary makes a final administrative determination with respect to such protest.

(4) **EXCEPTION FOR JEOPARDY.**—This subsection shall not apply if the Secretary finds that the collection of the penalty is in jeopardy.

[(b)] (c) **EXTENSION OF PERIOD OF COLLECTION WHERE BOND IS FILED.**—

(1) **IN GENERAL.**—If, within 30 days after the day on which notice and demand of any penalty under subsection (a) is made against any person, such person—

(A) * * *

* * * * *

(d) RIGHT OF CONTRIBUTION WHERE MORE THAN 1 PERSON LIABLE FOR PENALTY.—If more than 1 person is liable for the penalty under subsection (a) with respect to any tax, each person who paid such penalty shall be entitled to recover from other persons who are liable for such penalty an amount equal to the excess of the amount paid by such person over such person's proportionate share of the penalty. Any claim for such a recovery may be made only in a proceeding which is separate from, and is not joined or consolidated with—

(1) an action for collection of such penalty brought by the United States, or

(2) a proceeding in which the United States files a counterclaim or third-party complaint for the collection of such penalty.

(e) EXCEPTION FOR VOLUNTARY BOARD MEMBERS OF TAX-EXEMPT ORGANIZATIONS.—No penalty shall be imposed by subsection (a) on any unpaid, volunteer member of any board of trustees or directors of an organization exempt from tax under subtitle A if such member—

(1) is solely serving in an honorary capacity,

(2) does not participate in the day-to-day or financial operations of the organization, and

(3) does not have actual knowledge of the failure on which such penalty is imposed.

The preceding sentence shall not apply if it results in no person being liable for the penalty imposed by subsection (a).

* * * * *

SEC. 6885. ASSESSABLE PENALTY WITH RESPECT TO PUBLIC INSPECTION REQUIREMENTS FOR CERTAIN TAX-EXEMPT ORGANIZATIONS.

In addition to the penalty imposed by section 7207 (relating to fraudulent returns, statements, or other documents), any person who is required to comply with the requirements of subsection (d) or (e) of section 6104 and who fails to so comply with respect to any return or application, if such failure is willful, shall pay a penalty of ~~[\$1,000]~~ \$5,000 with respect to each such return or application.

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CHAPTER 74—CLOSING AGREEMENTS AND COMPROMISES

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SEC. 7122. COMPROMISES.

(a) AUTHORIZATION.—The Secretary may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) **RECORD.**—Whenever a compromise is made by the Secretary in any case, there shall be placed on file in the office of the Secretary the opinion of the General Counsel for the Department of the Treasury or his delegate, with his reasons therefor, with a statement of—

- (1) The amount of tax assessed,
- (2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and
- (3) The amount actually paid in accordance with the terms of the compromise.

Notwithstanding the foregoing provisions of this subsection, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than ~~[\$500.]~~ \$50,000. *However, such compromise shall be subject to continuing quality review by the Secretary.*

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CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

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Subchapter A—Crimes

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PART I—GENERAL PROVISIONS

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SEC. 7213. UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) RETURNS AND RETURN INFORMATION.—

(1) **FEDERAL EMPLOYEES AND OTHER PERSONS.**—It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) **STATE AND OTHER EMPLOYEES.**—It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i), (i)(6),

(7), (8), (9), (10), [or (12)] (12), or (15), or (m)(2), (4), (6), or (7) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

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CHAPTER 76—JUDICIAL PROCEEDINGS

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Subchapter B—Proceedings by Taxpayers and Third Parties

Sec. 7421. Prohibition of suits to restrain assessment or collection.

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[Sec. 7434. Cross references.]

Sec. 7434. Civil damages for fraudulent filing of information returns.

Sec. 7435. Civil damages for unauthorized enticement of information disclosure.

Sec. 7436. Cross references.

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SEC. 7422. CIVIL ACTIONS FOR REFUND

(a) * * *

* * * * *

(g) SPECIAL RULES FOR CERTAIN EXCISE TAXES IMPOSED BY CHAPTER 42 OR 43.—

(1) * * *

(2) LIMITATION ON SUIT FOR REFUND.—No suit may be maintained under this section for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975 with respect to any act (or failure to act) giving rise to liability for tax under such sections, unless no other suit has been maintained for credit or refund of, and no petition has been filed in the Tax Court with respect to a deficiency in, any other tax imposed by such sections with respect to such act (or failure to act).

(3) FINAL DETERMINATION OF ISSUES.—For purposes of this section, any suit for the credit or refund of any tax imposed under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4955, 4958, 4971, or 4975 with respect to any act (or failure to act) giving rise to liability for tax under such sections, shall constitute a suit to determine all questions with respect to any other tax imposed with respect to such act (or failure to act) under such sections, and failure by the parties to such suit to bring any such question before the Court shall constitute a bar to such question.

* * * * *

SEC. 7430. AWARDING OF COSTS AND CERTAIN FEES

(a) * * *

(b) LIMITATIONS.—

(1) **REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.**—A judgment for reasonable litigation costs shall not be awarded under subsection (a) in any court proceeding unless the court determines that the prevailing party has exhausted the administrative remedies available to such party within the Internal Revenue Service. *Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.*

(2) **ONLY COSTS ALLOCABLE TO THE UNITED STATES.**—An award under subsection (a) shall be made only for reasonable litigation and administrative costs which are allocable to the United States and not to any other party.

[(3) **EXCLUSION OF DECLARATORY JUDGMENT PROCEEDINGS.**—

[(A) **IN GENERAL.**—No award for reasonable litigation costs may be made under subsection (a) with respect to any declaratory judgment proceeding.

[(B) **EXCEPTION FOR SECTION 501(C)(3) DETERMINATION REVOCATION PROCEEDINGS.**—Subparagraph (A) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in section 501(c)(3).

[(4) **(3) COSTS DENIED WHERE PARTY PREVAILING PROTRACTS PROCEEDINGS.**—No award for reasonable litigation and administrative costs may be made under subsection (a) with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

(c) **DEFINITIONS.**—For purposes of this section—

(1) **REASONABLE LITIGATION COSTS.**—The term “reasonable litigation costs” includes—

(A) reasonable court costs, and

(B) based upon prevailing market rates for the kind or quality of services furnished—

(i) * * *

* * * * *

(ii) reasonable fees paid or incurred for the services of attorneys in connection with the court proceeding, except that such fees shall not be in excess of [\$75] \$110 per hour unless the court determines that [an increase in the cost of living or] a special factor, such as the limited availability of qualified attorneys for such proceeding, justifies a higher rate.

In the case of any calendar year beginning after 1996, the dollar amount referred to in clause (ii) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting “calendar year 1995” for “calendar year 1992” in subparagraph (B) thereof. If any dollar amount after being increased under the preceding sentence is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.

(2) **REASONABLE ADMINISTRATIVE COSTS.**—The term “reasonable administrative costs” means—

(A) any administrative fees or similar charges imposed by the Internal Revenue Service, and

(B) expenses, costs, and fees described in paragraph (1)(B), except that any determination made by the court under clause (ii) or (iii) thereof shall be made by the Internal Revenue Service in cases where the determination under [paragraph (4)(B)] *paragraph (4)(C)* of the awarding of reasonable administrative costs is made by the Internal Revenue Service.

Such term shall only include costs incurred on or after the earlier of (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or (ii) the date of the notice of deficiency.

* * * * *

(4) PREVAILING PARTY.—

(A) **IN GENERAL.**—The term “prevailing party” means any party in any proceeding to which subsection (a) applies (other than the United States or any creditor of the taxpayer involved)—

[(i) which establishes that the position of the United States in the proceeding was not substantially justified,

[(ii)] (i) which—

(I) has substantially prevailed with respect to the amount in controversy, or

(II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

[(iii)] (ii) which meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28, United States Code (as in effect on October 22, 1986) except to the extent differing procedures are established by rule of court and meets the requirements of section 2412(d)(2)(B) of such title 28 (as so in effect).

(B) **EXCEPTION IF UNITED STATES ESTABLISHES THAT ITS POSITION WAS SUBSTANTIALLY JUSTIFIED.**—

(i) **GENERAL RULE.**—A party shall not be treated as the prevailing party in a proceeding to which subsection (a) applies if the United States establishes that the position of the United States in the proceeding was substantially justified.

(ii) **PRESUMPTION OF NO JUSTIFICATION IF INTERNAL REVENUE SERVICE DIDN'T FOLLOW CERTAIN PUBLISHED GUIDANCE.**—For purposes of clause (i), the position of the United States shall be presumed not to be substantially justified if the Internal Revenue Service did not follow its applicable published guidance in the administrative proceeding. Such presumption may be rebutted.

(iii) **APPLICABLE PUBLISHED GUIDANCE.**—For purposes of clause (ii), the term “applicable published guidance” means—

(I) regulations, revenue rulings, revenue procedures, information releases, notices, and announcements, and

(II) any of the following which are issued to the taxpayer: private letter rulings, technical advice memoranda, and determination letters.

[(B)] (C) DETERMINATION AS TO PREVAILING PARTY.—Any determination under [subparagraph (A)] *this paragraph* as to whether a party is a prevailing party shall be made by agreement of the parties or—

(i) * * *

* * * * *

SEC. 7433. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS

(a) * * *

(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of [\$100,000] \$1,000,000 or the sum of—

(1) * * *

* * * * *

(d) LIMITATIONS.—

[(1) REQUIREMENT THAT ADMINISTRATIVE REMEDIES BE EXHAUSTED.—A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.]

(1) AWARD FOR DAMAGES MAY BE REDUCED IF ADMINISTRATIVE REMEDIES NOT EXHAUSTED.—The amount of damages awarded under subsection (b) may be reduced if the court determines that the plaintiff has not exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

* * * * *

SEC. 7434. CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS.

(a) IN GENERAL.—If any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return.

(b) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of—

(1) any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing),

(2) the costs of the action, and

(3) in the court's discretion, reasonable attorneys fees.

(c) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce the liability created under this

section may be brought without regard to the amount in controversy and may be brought only within the later of—

(1) 6 years after the date of the filing of the fraudulent information return, or

(2) 1 year after the date such fraudulent information return would have been discovered by exercise of reasonable care.

(d) **COPY OF COMPLAINT FILED WITH IRS**—Any person bringing an action under subsection (a) shall provide a copy of the complaint to the Internal Revenue Service upon the filing of such complaint with the court.

(e) **FINDING OF COURT TO INCLUDE CORRECT AMOUNT OF PAYMENT**—The decision of the court awarding damages in an action brought under subsection (a) shall include a finding of the correct amount which should have been reported in the information return.

(f) **INFORMATION RETURN**—For purposes of this section, the term “information return” means any statement described in section 6724(d)(1)(A).

SEC. 7435. CIVIL DAMAGES FOR UNAUTHORIZED ENTICEMENT OF INFORMATION DISCLOSURE.

(a) **IN GENERAL**—If any officer or employee of the United States intentionally compromises the determination or collection of any tax due from an attorney, certified public accountant, or enrolled agent representing a taxpayer in exchange for information conveyed by the taxpayer to the attorney, certified public accountant, or enrolled agent for purposes of obtaining advice concerning the taxpayer's tax liability, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) **DAMAGES**—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of \$500,000 or the sum of—

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the information disclosure, and

(2) the costs of the action.

Damages shall not include the taxpayer's liability for any civil or criminal penalties, or other losses attributable to incarceration or the imposition of other criminal sanctions.

(c) **PAYMENT AUTHORITY**—Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(d) **PERIOD FOR BRINGING ACTION**—Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the actions creating such liability would have been discovered by exercise of reasonable care.

(e) **MANDATORY STAY**—Upon a certification by the Commissioner or the Commissioner's delegate that there is an ongoing investigation or prosecution of the taxpayer, the district court before which an action under this section is pending shall stay all proceedings with respect to such action pending the conclusion of the investigation or prosecution.

(f) *CRIME-FRAUD EXCEPTION.*—Subsection (a) shall not apply to information conveyed to an attorney, certified public accountant, or enrolled agent for the purpose of perpetrating a fraud or crime.

SEC. 17434. CROSS REFERENCES

(1) * * *

* * * * *

Subchapter C—The Tax Court

* * * * *

PART II—PROCEDURE

* * * * *

SEC. 7454. BURDEN OF PROOF IN FRAUD, FOUNDATION MANAGER, AND TRANSFEREE CASES

(a) * * *

(b) *FOUNDATION MANAGERS.*—In any proceeding involving the issue whether a foundation manager (as defined in section 4946(b)) has “knowingly” participated in an act of self-dealing (within the meaning of section 4941), participated in an investment which jeopardizes the carrying out of exempt purposes (within the meaning of section 4944), or agreed to the making of a taxable expenditure (within the meaning of section 4945), or whether the trustee of a trust described in section 501(c)(21) has “knowingly” participated in an act of self-dealing (within the meaning of section 4951) or agreed to the making of a taxable expenditure (within the meaning of section 4952), or whether an organization manager (as defined in section 4955(e)(2)) has “knowingly” agreed to the making of a political expenditure (within the meaning of section 4955), or whether an organization manager (as defined in section 4912(d)(2)) has “knowingly” agreed to the making of disqualifying lobbying expenditures within the meaning of section 4912(b), or whether an organization manager (as defined in section 4958(f)(2)) has “knowingly” participated in an excess benefit transaction (as defined in section 4958(c)), the burden of proof in respect of such issue shall be upon the Secretary.

* * * * *

CHAPTER 77—MISCELLANEOUS PROVISIONS

Sec. 7501. Liability for taxes withheld or collected.

* * * * *

Sec. 7524. Annual notice of tax delinquency.

* * * * *

SEC. 7502. TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

(a) * * *

* * * * *

(f) *TREATMENT OF PRIVATE DELIVERY SERVICES.*—

(1) *IN GENERAL.*—Any reference in this section to the United States mail shall be treated as including a reference to any des-

ignated delivery service, and any reference in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked as described in paragraph (2)(C) by any designated delivery service.

(2) **DESIGNATED DELIVERY SERVICE.**—For purposes of this subsection, the term “designated delivery service” means any delivery service provided by a trade or business if such service is designated by the Secretary for purposes of this section. The Secretary may designate a delivery service under the preceding sentence only if the Secretary determines that such service—

(A) is available to the general public,

(B) is at least as timely and reliable on a regular basis as the United States mail,

(C) records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item referred to in this section is to be delivered, the date on which such item was given to such trade or business for delivery, and

(D) meets such other criteria as the Secretary may prescribe.

(3) **EQUIVALENTS OF REGISTERED AND CERTIFIED MAIL.**—The Secretary may provide a rule similar to the rule of paragraph (1) with respect to any service provided by a designated delivery service which is substantially equivalent to United States registered or certified mail.

* * * * *

SEC. 7524. ANNUAL NOTICE OF TAX DELINQUENCY.

Not less often than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice.

* * * * *

CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

* * * * *

Subchapter A—Examination and Inspection

* * * * *

SEC. 7608. AUTHORITY OF INTERNAL REVENUE ENFORCEMENT OFFICERS

(a) * * *

* * * * *

(c) **RULES RELATING TO UNDERCOVER OPERATIONS.**—

(1) * * *

* * * * *

(4) **AUDITS**

(A) * * *

(B) The Service shall also submit a report annually to the Congress specifying as to its undercover investigative operations—

(i) the number, by programs, of undercover investigative operations pending as of the end of the 1-year period for which such report is submitted;

(ii) the number, by programs, of undercover investigative operations commenced in the 1-year period [preceding the period] for which such report is submitted; [and

[(iii) the number, by programs, of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect thereto.]

(iii) the number, by programs, of undercover investigative operations closed in the 1-year period for which such report is submitted, and

(iv) the following information with respect to each undercover investigative operation pending as of the end of the 1-year period for which such report is submitted or closed during such 1-year period—

(I) the date the operation began and the date of the certification referred to in the last sentence of paragraph (1),

(II) the total expenditures under the operation and the amount and use of the proceeds from the operation,

(III) a detailed description of the operation including the potential violation being investigated and whether the operation is being conducted under grand jury auspices, and

(IV) the results of the operation including the results of criminal proceedings.

(5) DEFINITIONS.—For purposes of paragraph (4)—

(A) * * *

* * * * *

[(C) UNDERCOVER INVESTIGATIVE OPERATION.—The terms “undercover investigative operation” and “undercover operation” mean any undercover investigative operation of the Service—

[(i) in which—

[(I) the gross receipts (excluding interest earned) exceed \$50,000; or

[(II) expenditures, both recoverable and nonrecoverable (other than expenditures for salaries of employees), exceed \$150,000; and

[(ii) which is exempt from section 3302 or 9102 of title 31, United States Code.

Clauses (i) and (ii) shall not apply with respect to the report required under subparagraph (B) of paragraph (4).]

(C) **UNDERCOVER INVESTIGATIVE OPERATION.**—The term “undercover investigative operation” means any undercover investigative operation of the Service; except that, for purposes of subparagraphs (A) and (C) of paragraph (4), such term only includes an operation which is exempt from section 3302 or 9102 of title 31, United States Code.

(6) **APPLICATION OF SECTION.**—The provisions of this subsection—

(A) shall apply after November 17, 1988, and before January 1, 1990, and

(B) shall apply after the date of the enactment of this paragraph and before January 1, 2001.

All amounts expended pursuant to this subsection during the period described in subparagraph (B) shall be recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before January 1, 2001.

SEC. 7609. SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES

(a) **NOTICE.**—

(1) * * *

* * * * *

(3) **THIRD-PARTY RECORDKEEPER DEFINED.**—For purposes of this subsection, the term “third-party recordkeeper” means—

(A) * * *

* * * * *

(G) any barter exchange (as defined in section 6045(c)(3)); [and]

(H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof[.]; and

(I) any enrolled agent.

* * * * *

Subchapter B—General Powers and Duties

Sec. 7621. Internal revenue districts.

* * * * *

[Sec. 7623. Expenses of detection and punishment of frauds.]

Sec. 7629. Expenses of detection of underpayments and fraud, etc.

* * * * *

[SEC. 7623. EXPENSES OF DETECTION AND PUNISHMENT OF FRAUDS]

[The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law.]

SEC. 7623. EXPENSES OF DETECTION OF UNDERPAYMENTS AND FRAUD, ETC.

The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for—

(1) detecting underpayments of tax, and

(2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,
 in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts (other than interest) collected by reason of the information provided, and any amount so collected shall be available for such payments.

* * * * *

CHAPTER 80—GENERAL RULES

* * * * *

Subchapter A—Application of Internal Revenue Law

Sec. 7801. Authority of the Department of the Treasury.

[Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioner (Employee Plans and Exempt Organizations).]

Sec. 7802. Commissioner of Internal Revenue; Assistant Commissioners; Taxpayer Advocate.

* * * * *

[SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS)]

SEC. 7802. COMMISSIONER OF INTERNAL REVENUE; ASSISTANT COMMISSIONERS; TAXPAYER ADVOCATE.

(a) * * *

* * * * *

(d) OFFICE OF TAXPAYER ADVOCATE.—

(1) *IN GENERAL.* There is established in the Internal Revenue Service an office to be known as the "Office of the Taxpayer Advocate". Such office shall be under the supervision and direction of an official to be known as the "Taxpayer Advocate" who shall be appointed by and report directly to the Commissioner of Internal Revenue. The Taxpayer Advocate shall be entitled to compensation at the same rate as the highest level official reporting directly to the Deputy Commissioner of the Internal Revenue Service.

(2) *FUNCTIONS OF OFFICE.*

(A) *IN GENERAL.*—It shall be the function of the Office of Taxpayer Advocate to

(i) assist taxpayers in resolving problems with the Internal Revenue Service,

(ii) identify areas in which taxpayers have problems in dealings with the Internal Revenue Service,

(iii) to the extent possible, propose changes in the administrative practices of the Internal Revenue Service to mitigate problems identified under clause (ii), and

(iv) identify potential legislative changes which may be appropriate to mitigate such problems.

(B) ANNUAL REPORTS.—

(i) **OBJECTIVES.**—Not later than June 30 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the objectives of the Taxpayer Advocate for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

(ii) **ACTIVITIES.**—Not later than December 31 of each calendar year after 1995, the Taxpayer Advocate shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the activities of the Taxpayer Advocate during the fiscal year ending during such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and shall—

(I) identify the initiatives the Taxpayer Advocate has taken on improving taxpayer services and Internal Revenue Service responsiveness,

(II) contain recommendations received from individuals with the authority to issue Taxpayer Assistance Orders under section 7811,

(III) contain a summary of at least 20 of the most serious problems encountered by taxpayers, including a description of the nature of such problems,

(IV) contain an inventory of the items described in subclauses (I), (II), and (III) for which action has been taken and the result of such action,

(V) contain an inventory of the items described in subclauses (I), (II), and (III) for which action remains to be completed and the period during which each item has remained on such inventory,

(VI) contain an inventory of the items described in subclauses (II) and (III) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Internal Revenue Service official who is responsible for such inaction,

(VII) identify any Taxpayer Assistance Order which was not honored by the Internal Revenue Service in a timely manner, as specified under section 7811(b),

(VIII) contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by taxpayers,

(IX) describe the extent to which regional problem resolution officers participate in the selection and evaluation of local problem resolution officers, and

(X) include such other information as the Taxpayer Advocate may deem advisable.

(iii) **REPORT TO BE SUBMITTED DIRECTLY.**—Each report required under this subparagraph shall be provided directly to the Committees referred to in clauses (i) and (ii) without any prior review or comment from the Commissioner, the Secretary of the Treasury, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.

(3) **RESPONSIBILITIES OF COMMISSIONER.**—The Commissioner of Internal Revenue shall establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the Taxpayer Advocate within 3 months after submission to the Commissioner.

* * * * *

SEC. 7805. RULES AND REGULATIONS

(a) * * *

(b) **RETROACTIVITY OF REGULATIONS OR RULINGS.**—The Secretary may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.]

(b) **RETROACTIVITY OF REGULATIONS.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

(A) The date on which such regulation is filed with the Federal Register.

(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

(2) **EXCEPTION FOR PROMPTLY ISSUED REGULATIONS.**—Paragraph (1) shall not apply to regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which the regulation relates.

(3) **PREVENTION OF ABUSE.**—The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

(4) **CORRECTION OF PROCEDURAL DEFECTS.**—The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

(5) **INTERNAL REGULATIONS.**—The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

(6) **CONGRESSIONAL AUTHORIZATION.**—The limitation of paragraph (1) may be superseded by a legislative grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

(7) **ELECTION TO APPLY RETROACTIVELY.**—*The Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).*

(8) **APPLICATION TO RULINGS.**—*The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.*

* * * * *

SEC. 7811. TAXPAYER ASSISTANCE ORDERS

(a) **AUTHORITY TO ISSUE.**—Upon application filed by a taxpayer with [the Office of Ombudsman] *the Office of the Taxpayer Advocate* (in such form, manner, and at such time as the Secretary shall by regulations prescribe), the [Ombudsman] *Taxpayer Advocate* may issue a Taxpayer Assistance Order if, in the determination of the [Ombudsman] *Taxpayer Advocate*, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.

(b) **TERMS OF A TAXPAYER ASSISTANCE ORDER.**—The terms of a Taxpayer Assistance Order may require the Secretary *within a specified time period*—

- (1) to release property of the taxpayer levied upon, or
- (2) to cease any action, *take any action as permitted by law,* or refrain from taking any action, with respect to the taxpayer under—

- (A) chapter 64 (relating to collection),
- (B) subchapter B of chapter 70 (relating to bankruptcy and receiverships),
- (C) chapter 78 (relating to discovery of liability and enforcement of title), or
- (D) any other provision of law which is specifically described by the [Ombudsman] *Taxpayer Advocate* in such order.

[(c) **AUTHORITY TO MODIFY OR RESCIND.** Any Taxpayer Assistance Order issued by the Ombudsman under this section may be modified or rescinded only by the Ombudsman, a district director, a service center director, a compliance center director, a regional director of appeals, or any superior of any such person.]

(c) **AUTHORITY TO MODIFY OR RESCIND.**—*Any Taxpayer Assistance Order issued by the Taxpayer Advocate under this section may be modified or rescinded—*

- (1) *only by the Taxpayer Advocate, the Commissioner of Internal Revenue, or the Deputy Commissioner of Internal Revenue, and*

- (2) *only if a written explanation of the reasons for the modification or rescission is provided to the Taxpayer Advocate.*

(d) **SUSPENSION OF RUNNING OF PERIOD OF LIMITATION.**—The running of any period of limitation with respect to any action described in subsection (b) shall be suspended for—

- (1) the period beginning on the date of the taxpayer's application under subsection (a) and ending on the date of the [Om-

budsman's] *Taxpayer Advocate's* decision with respect to such application, and

(2) any period specified by the [Ombudsman] *Taxpayer Advocate* in a Taxpayer Assistance Order issued pursuant to such application.

(e) **INDEPENDENT ACTION OF [OMBUDSMAN] TAXPAYER ADVOCATE.**—Nothing in this section shall prevent the [Ombudsman] *Taxpayer Advocate* from taking any action in the absence of an application under subsection (a).

(f) **[OMBUDSMAN] TAXPAYER ADVOCATE.**—For purposes of this section, the term "[Ombudsman] *Taxpayer Advocate*" includes any designee of the [Ombudsman] *Taxpayer Advocate*.

* * * * *

SECTION 7601 OF THE ANTI-DRUG ABUSE ACT OF 1988

SEC. 7601. DISCLOSURE OF INFORMATION ON CASH TRANSACTIONS; UNDERCOVER ACTIVITIES OF INTERNAL REVENUE SERVICE.

(a) * * *

* * * * *

(c) **ENHANCEMENT OF UNDERCOVER CAPABILITIES OF THE INTERNAL REVENUE SERVICE.**—

(1) * * *

* * * * *

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall take effect on the date of the enactment of this Act [and shall cease to apply after December 31, 1989; and all amounts expended pursuant to such amendments shall be recovered to the extent possible, and deposited in the Treasury of the United States as miscellaneous receipts, before January 1, 1990.].

* * * * *

○

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, § 42; 1.42-14.)

Rev. Proc. 96-46

SECTION 1. PURPOSE

This revenue procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under § 42(h)(3)(D) of the Internal Revenue Code for calendar year 1996.

SECTION 2. BACKGROUND

Rev. Proc. 92-31, 1992-1 C.B. 775, provides guidance to state housing credit agencies of qualified states on the procedure for requesting an allocation of unused housing credit carryovers under § 42(h)(3)(D). Section 4.06 of Rev. Proc. 92-31 provides that the Internal Revenue Service will publish in the Internal Revenue Bulletin the amount of unused housing credit carryovers allocated to qualified states for a calendar year from a national pool of unused credit authority (the National Pool). This revenue procedure publishes these amounts for calendar year 1996.

SECTION 3. PROCEDURE

.01 The unused housing credit carryover amount allocated from the National Pool by the Secretary to each qualified state for calendar year 1996 is as follows:

<i>Qualified State</i>	<i>Amount Allocated</i>
Alabama	\$117,431
Alaska	16,867
Arizona	113,423

<i>Qualified State</i>	<i>Amount Allocated</i>
California	874,843
Colorado	101,760
Connecticut	91,156
Florida	388,365
Hawaii	32,816
Idaho	31,536
Illinois	327,102
Indiana	160,100
Iowa	78,742
Kansas	71,087
Kentucky	106,520
Maine	34,514
Maryland	139,336
Massachusetts	168,144
Michigan	264,309
Minnesota	127,117
Mississippi	74,288
Missouri	146,907
Nebraska	45,174
Nevada	40,554
New Hampshire	31,647
New Jersey	219,998
New Mexico	46,037
New York	505,712
Ohio	309,011
Oregon	85,895
Pennsylvania	335,453
Rhode Island	27,750
South Dakota	20,068
Tennessee	144,040
Utah	53,107
Vermont	16,144
Virginia	182,367
Washington	148,716
Wisconsin	141,451

.02 When certain issues are resolved, qualified states may be entitled to an additional allocation from the 1996 National Pool. If it is determined that

qualified states are entitled to an additional allocation from the 1996 National Pool, the Service will publish the additional amount allocated to each qualified state as quickly as feasible to enable the state to allocate the amount before the close of 1996. Unless the Service is notified by a qualified state that it does not wish an additional allocation before these amounts are published, the Service will assume that a qualified state wishes to receive an additional allocation. A qualified state should notify the Service that it does not wish an additional allocation from the 1996 National Pool by writing to the address published in Sec. 4.05 of Rev. Proc. 92-31, in which case the refused additional allocation can be allocated to other qualified states. Any additional amount that a qualified state fails to allocate before the close of 1996 will not be considered in determining whether a state qualifies for the 1997 National Pool.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for allocations of housing credit dollar amounts attributable to the National Pool component of a qualified state's housing credit ceiling for calendar year 1996.

DRAFTING INFORMATION

The principal author of this revenue procedure is Christopher J. Wilson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Wilson on (202) 622-3040 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Disclaimer of Interests and Powers

REG-208215-91

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of disclaimers for estate and gift tax purposes. The regulations propose to clarify certain provisions governing the disclaimer of property interests and powers and, in addition, to conform the regulations to court decisions holding the current regulation invalid with respect to the disclaimer of joint property interests. The proposed regulations will affect persons who disclaim interests, powers or interests in jointly owned property after the effective date of these regulations.

DATES: Written comments and requests for a public hearing must be received by November 19, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-208215-91), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-208215-91), Courier's Desk Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternately, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_reg/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dale Carlton, (202) 622-3090; concerning submissions, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the Estate and Gift Tax Regulations (26 CFR parts 20 and 25) under sections 2041, 2046, 2056, 2511, 2514, and

2518, relating to the disclaimer of interests in property and powers over property.

1. Interests and powers subject to the disclaimer rules

Under section 2518(a), if a person makes a qualified disclaimer, then for transfer tax purposes, the interest disclaimed is treated as never having passed to the person disclaiming. Under section 2518(b)(2)(A), in order to have a qualified disclaimer, an interest must be disclaimed within 9 months of the date of "the transfer creating the interest" in the person disclaiming. A person to whom any interest passes by reason of the exercise or lapse of a general power of appointment must disclaim the interest passing within 9 months after the exercise or lapse.

The current regulations provide that section 2518 applies to the disclaimer of interests or powers created pursuant to "taxable transfers" made after December 31, 1976. They further provide that the 9-month period within which the disclaimer must be made is to be determined with reference to the "taxable transfer" creating the interest in the disclaimant. The term "taxable transfer" was incorporated into the regulation based on a statement in the legislative history underlying the enactment of section 2518. H.R. Conf. Rep. No. 1515, 94th Cong., 2d Sess. 623 (1976).

Because the reference point under the regulation is the "taxable transfer" creating the interest, the existing regulation could be viewed as implying that the disclaimer of an interest created in a transfer that is outside the scope of the estate or gift tax need not comply with the requirements of section 2518. For example, if the disclaimed property constitutes an interest in foreign situs property created pursuant to a transfer by a nonresident alien donor or decedent, the transfer by the nonresident alien would not be within the scope of the gift tax or estate tax. However, a disclaimer of such an interest would have to comply with section 2518; otherwise, there could be transfer tax consequences to the disclaimant.

Similarly, the regulations do not specifically address the disclaimer of a property interest passing as a result of the lapse or release of a general power of appointment created on or before October 21, 1942. Under sections

2041(a)(1) and 2514(a), the lapse or release of a pre-1942 power is not subject to transfer tax.

The scope of the term "taxable transfer", as used in § 25.2511-1(c)(2), a related provision governing the disclaimer of interests created in taxable transfers made prior to January 1, 1977, was considered in the Eighth Circuit decision in *United States v. Irvine*, 981 F.2d 991 (8th Cir. 1992), *rev'd*, 114 S.Ct 1473 (1994), and in *Ordway v. United States*, 908 F.2d 890 (11th Cir. 1991). In these cases, the disclaimant argued that a disclaimer that did not satisfy the requirements of § 25.2511-1(c)(2) was nonetheless effective for estate and gift tax purposes because the trust interest that was disclaimed was created pursuant to a transfer in trust made prior to the enactment of the federal gift tax. Accordingly, the disclaimant argued that the interest was not created in a "taxable transfer" prior to January 1, 1977, the regulation did not apply and the disclaimer had only to be effective under state law to avoid federal tax. The Service argued in both cases that the term "taxable transfer" references a generic completed gift under § 25.2511-2 of the regulations. The Eleventh Circuit agreed with the Service in *Ordway*, while the Eighth Circuit disagreed in *Irvine*. The Supreme Court did not resolve this issue in its review of *Irvine*. The Court concluded that even if § 25.2511-2 did not apply, the disclaimer caused the transfer of an interest that had not been timely disclaimed, and the transfer was subject to gift tax. In view of the conflicting Eighth and Eleventh Circuit decisions in *Irvine* and *Ordway*, the Treasury and the IRS believe that it is appropriate to clarify the regulations.

2. Disclaimer of Jointly-owned Property

The current regulations provide, in general, that in order to be a qualified disclaimer under section 2518, a surviving joint tenant's disclaimer of *both* an interest passing to the joint tenant on the creation of the tenancy, and the survivorship interest in the joint tenancy or tenancy by the entirety, must be made within 9 months after the transfer creating the tenancy. Further, a joint tenant cannot make a qualified disclaimer of any portion of a joint interest attributable to consideration furnished by that tenant.

Section 25.2518-2(c)(4)(ii) provides a special rule with respect to joint tenancies and tenancies by the entirety in real property created after 1976 but prior to 1982. During that period, section 2515 applied in determining the gift tax consequences of the creation of a joint tenancy with right of survivorship or tenancy by the entirety in real property between husband and wife. Under section 2515, the creation of the tenancy was not treated as a gift subject to gift tax unless the parties elected to treat the creation of the tenancy as a gift. Rather, a transfer subject to gift tax occurs on the termination of the tenancy (other than by reason of the death of one of the tenants) if the proceeds of termination are not divided according to the consideration furnished by each party to the tenancy. Under § 25.2518-2(c)(4)-(ii), in general, an interest in a tenancy created between 1976 and 1982 can be disclaimed within 9 months of the date of death of the first joint tenant to die, provided no election was made under section 2515 to treat the creation of the tenancy as a gift. The disclaimant can disclaim up to the portion of the tenancy included in the decedent's gross estate under section 2040.

Section 2515 was enacted in the Internal Revenue Code of 1954, effective for tenancies created after December 31, 1954, and was repealed with respect to tenancies created after December 31, 1981, by the Economic Recovery Tax Act of 1981. The Technical and Miscellaneous Revenue Act of 1988 added section 2523(i)(3) which provides that, where the spouse of a donor is not a citizen of the United States, the principles of section 2515, as such section was in effect before its repeal, shall apply (except for the provisions providing for an election), in determining the gift tax consequences of the creation of a joint tenancy or tenancy by the entirety in real property between husband and wife.

Although section 2515 was effective for tenancies created after 1954 and before 1982, and, in addition, the principles of section 2515 are currently effective for tenancies created on or after July 14, 1988, where the donee spouse is not a citizen, the special rule in the current regulation applies only to tenancies subject to section 2515 created after 1976 and before 1982.

The validity of the current regulations with respect to joint interests that are unilaterally severable has been the subject of repeated litigation. In *Kennedy v.*

Commissioner, 804 F.2d 1332 (7th Cir. 1986), the court held that the surviving spouse's survivorship interest in the decedent's one-half interest in jointly held real property was created on the decedent's death since, prior to that time, the decedent could have unilaterally severed the interest and defeated the spouse's survivorship right in that interest. Accordingly, the court held that the survivorship interest could be disclaimed within 9 months of the decedent's death. The court concluded that the current regulations are invalid to the extent that they require a survivorship interest in a severable joint tenancy to be disclaimed within 9 months of the creation of the tenancy. In *Estate of Dancy v. Commissioner*, 872 F.2d 84 (4th Cir. 1989) (involving personal property), and *McDonald v. Commissioner*, 853 F.2d 1494 (8th Cir. 1988) (involving real property), the courts also held the regulations invalid.

In *McDonald*, the Eighth Circuit remanded the case to the Tax Court to determine if the disclaimer was otherwise qualified under section 2518. On remand, the Service argued that since the joint property was attributable entirely to consideration furnished by the disclaiming spouse, the spouse could not disclaim any interest in the property under section 2518. The Tax Court rejected this argument in *McDonald v. Commissioner*, T.C.M. 1989-140.

The Service announced in A.O.D. CC-1990-06 (Feb. 7, 1990) that it will follow these decisions.

3. Disclaimer of Joint Bank Accounts

For gift tax purposes, the creation of a joint bank account is treated as an incomplete transfer since, generally, the contributing joint tenant may unilaterally withdraw contributed funds without the consent of the other joint tenant. Accordingly, unless a noncontributing joint tenant has withdrawn the funds, the transfer to a joint bank account does not become complete before the death of the first joint tenant.

Explanation of Provisions

1. Interests and powers subject to the disclaimer rules

The proposed amendment clarifies that the application of section 2518, or the commencement of the 9-month period, is not dependent on the actual imposition of a transfer tax when the interest to be disclaimed is created. The

proposed amendment substitutes the statutory language of section 2518(b)-(2)(A), "transfer creating the interest," for "taxable transfer" as the reference point for determining the scope of the regulations as well as when the time period for making the disclaimer commences. Under the proposed amendment, the term "transfer creating the interest" includes any inter vivos transfer that would be a completed gift under the gift tax regulations, whether or not a gift tax liability arises on the transfer and whether or not the transfer comes within the scope of the gift tax. Similarly, the amendment clarifies that, for testamentary transfers, the transfer creating the interest occurs on the date of the decedent's death, whether or not an estate tax is imposed on the transfer and whether or not the transfer comes within the scope of the estate tax. The amendment also clarifies that, in the case of a disclaimer of an interest passing pursuant to the exercise, lapse, or release of a general power of appointment, the disclaimer must be made within 9 months of the exercise, lapse, or release of the power, regardless of whether the exercise, lapse, or release is subject to estate or gift tax. The proposed regulations make conforming changes to the estate and gift tax regulations.

2. Disclaimer of Jointly-owned Property

The proposed amendments would revise the regulations to provide that, in general, if a joint tenancy may be unilaterally severed by either party, then a surviving joint tenant may disclaim the one-half survivorship interest in property held in joint tenancy with right of survivorship within 9 months of the death of the first joint tenant to die, even if the surviving joint tenant provided some or all of the consideration for the creation of the tenancy.

The rationale of the courts in *Dancy*, *Kennedy*, and *McDonald* does not apply to joint interests that cannot be unilaterally severed under applicable state law, such as interests held in tenancy by the entirety. In tenancies by the entirety, the donee spouse's joint interest in the property that cannot be unilaterally severed is created on the date the tenancy is created. Therefore, the proposed amendment to the regulations would reaffirm that any interest in a nonseverable cotenancy, including the survivorship interest, must be disclaimed within 9 months of the date of the creation of the

tenancy. However, the Service requests comments on whether or under what circumstances (e.g., tenancy by the entirety ownership of a personal residence) the rule applicable to unilaterally severable interests should apply to interests that are not unilaterally severable.

The proposed amendments would extend the special rule in § 25.2518-2(c)(4)(ii) to tenancies created after December 31, 1954, and on or before December 31, 1981, the entire period during which section 2515 was in effect. In addition, the special rule would be expanded to include tenancies created on or after July 14, 1988, where the spouse of the donor is not a United States citizen. Under section 2523(i)(3), the creation of such tenancies is also subject to the rules of former section 2515. The special rule reflects the gift tax treatment of the creation of a joint tenancy or tenancy by the entirety that was subject to section 2515. The relief afforded by the special rule will apply to all tenancies that were subject on creation to section 2515. Under the special rule, the amount that the surviving joint tenant can disclaim is dependent on the amount that is includible in the decedent's gross estate.

3. Disclaimer of Joint Bank Accounts

The proposed regulations provide specific rules to address the disclaimer of joint bank accounts. Because the transfer creating the interest in the funds remaining in the bank account at the death of the first joint tenant to die occurs at that tenant's death, the 9-month period for making the qualified disclaimer commences on the death of the first joint tenant.

The proposed regulations also clarify that a surviving joint tenant cannot disclaim any portion of the account attributable to that survivor's contribution to the account. These contributed funds are property owned by the survivor during the cotenancy and the survivor cannot disclaim property the survivor has always owned and never transferred. Further, the proposed regulations clarify that this rule applies even if only one-half of the property is included in the decedent's gross estate under section 2040(b) because the joint tenants are married.

The proposed regulations also clarify the estate tax treatment of a disclaimed interest in a joint bank account. State law generally treats a disclaimant as predeceasing the decedent with respect

to the disclaimed interest. The disclaimed interest in a joint bank account (the creation of which is treated as an incomplete gift under the gift tax regulations), would lose its character as joint property and pass through the decedent's probate estate. Accordingly, under such circumstances, the interest disclaimed is subject to inclusion in the decedent's gross estate under section 2033, rather than section 2040(a) (providing for inclusion based on the contribution of each tenant) or section 2040(b) (providing for inclusion of one-half the property in the case of certain joint tenancies between spouses). The balance of the account not subject to the disclaimer retains its character as joint property and is includible in the decedent's gross estate under either section 2040(a) or section 2040(b).

These rules are also made applicable to joint brokerage accounts, since the transfer tax treatment of these accounts generally parallels the treatment of joint bank accounts. See Rev. Rul. 69-148, 1969-1 C.B. 226.

Proposed Effective dates

The amendments to § 25.2518-1(a) and 25.2518-2(c)(3) (substituting the statutory language in section 2518(b)-(2)(A) "transfer creating the interest," for "taxable transfer") and conforming changes to § 20.2041-3(d)(6)(i), 20.2046-1, 20.2056(d)-2(a) and (b), 25.2511-1(c)(1), 25.2514-3(c)(5), are proposed to be effective for transfers creating the interest or power to be disclaimed made after the date of publication as final regulations in the Federal Register. However, Treasury and the IRS do not view these amendments as prescribing any new rules for applying section 2518.

The amendments to § 25.2518-2(c)(4) (relating to the disclaimer of joint property and bank accounts) are proposed to be effective for disclaimers made after the date these regulations are published in the Federal Register as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulations

do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Dale Carlton, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and Treasury Department participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 25 are proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part:
Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 20.2041-3 is amended as follows:

1. Paragraph (d)(6)(i) is amended by revising the first sentence and by adding a new second sentence.

2. Paragraph (d)(6)(iii) is added.

The additions and revisions read as follows:

§ 20.2041-3 Powers of appointment created after October 21, 1942.

* * * * *

(d) * * *

(6)(i) A disclaimer or renunciation of a general power of appointment created

in a transfer made after December 31, 1976, is not considered to be the release of the power if the disclaimer or renunciation is a qualified disclaimer as described in section 2518 and the corresponding regulations. For rules relating to when the transfer creating the power occurs, see § 25.2518-2(c)(3). * * *

* * * * *

(iii) The first and second sentences of paragraph (d)(6)(i) of this section are effective for transfers creating the power to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 3. Section 20.2046-1 is revised to read as follows:

§ 20.2046-1 *Disclaimed property.*

(a) This section shall apply to the disclaimer or renunciation of an interest in the person disclaiming by a transfer made after December 31, 1976. For rules relating to when the transfer creating the interest occurs, see § 25.2518-2(c)(3) and (c)(4) of chapter 12. If a qualified disclaimer is made with respect to such a transfer, the Federal estate tax provisions are to apply with respect to the property interest disclaimed as if the interest had never been transferred to the person making the disclaimer. See section 2518 and the corresponding regulations for rules relating to a qualified disclaimer.

(b) The first and second sentences of this section are effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

Par. 4. Section 20.2056(d)-2 is amended as follows:

1. Paragraph (a) is amended by revising the first sentence and adding a new sentence after the first sentence, and paragraph (b) is revised.

2. A new paragraph (c) is added.
The additions and revisions read as follows:

§ 20.2056(d)-2 *Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.*

(a) * * * If a surviving spouse disclaims an interest in property passing to such spouse from the decedent created in a transfer made after December 31, 1976, the effectiveness of the disclaimer will be determined by section 2518 and the corresponding regulations. For rules relating to when the transfer creating the

interest occurs, see § 25.2518-2(c)(3) and (c)(4) of chapter 12. * * *

(b) *Disclaimer by a person other than a surviving spouse.* If an interest in property passes to a person other than the surviving spouse from a decedent, and the interest is created in a transfer made after December 31, 1976, and —

(1) The person other than the surviving spouse makes a qualified disclaimer with respect to such interest, and

(2) The surviving spouse is entitled to such interest in property as a result of such disclaimer, the disclaimed interest is treated as passing directly from the decedent to the surviving spouse. For rules relating to when the transfer creating the interest occurs, see § 25.2518-2(c)(3) and (c)(4) of chapter 12.

(c) *Effective date.* The first and second sentences of paragraphs (a) and (b) of this section are effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 25.2518-2 is also issued under 26 U.S.C. 2518(b). * * *

Par. 6. Section 25.2511-1 is amended as follows:

1. In paragraph (c)(1), the fourth sentence is revised.

2. A new paragraph (c)(3) is added.

The additions and revisions read as follows:

§ 25.2511-1 *Transfers in general.*

* * * * *

(c)(1) * * * However, in the case of a transfer creating an interest in property (within the meaning of § 25.2518-2(c)(3) and (c)(4)) made after December 31, 1976, this paragraph (c)(1) shall not apply to the donee if, as a result of a qualified disclaimer by the donee the interest passes to a different donee. * * *

* * * * *

(3) The fourth sentence of paragraph (c)(1) of this section is effective for transfers creating an interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 7. Section 25.2514-3 is amended as follows:

1. Paragraph (c)(5) is amended by revising the first sentence and adding a new second sentence.

2. A new paragraph (c)(7) is added.
The additions and revisions read as follows:

§ 25.2514-3 *Powers of appointment created after October 21, 1942.*

* * * * *

(c) * * *

(5) * * * A disclaimer or renunciation of a general power of appointment created in a transfer made after December 31, 1976, is not considered a release of the power for gift tax purposes if the disclaimer or renunciation is a qualified disclaimer as described in section 2518 and the corresponding regulations. For rules relating to when a transfer creating the power occurs, see § 25.2518-2(c)(3). * * *

* * * * *

(7) The first and second sentences of paragraph (5) of § 25.2514-3(c) are effective for transfers creating the power to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 8. Section 25.2518-1 is amended as follows:

1. Paragraph (a)(1) is revised.

2. In paragraph (a)(2), the third, fourth, and fifth sentences of the *Example* are revised and a new sentence is added after the third sentence.

3. A new paragraph (a)(3) is added.

The additions and revisions read as follows:

§ 25.2518-1 *Qualified disclaimers of property; In general.*

(a) * * * (1) *In general.* The rules described in §§ 25.2518-1 through 25.2518-3 apply to the qualified disclaimer of an interest in property which is created in the person disclaiming by a transfer made after December 31, 1976. In general, a qualified disclaimer is an irrevocable and unqualified refusal to accept the ownership of an interest in property. For rules relating to the determination of when a transfer creating an interest occurs, see § 25.2518-2(c)(3) and (4).

(2) * * * The transfer creating the remainder interest in the trust occurred in 1968. See § 25.2511-1(c)(2). Therefore, section 2518 does not apply to the disclaimer of the remainder interest because the transfer creating the interest was made prior to January 1, 1977. If,

however, W had caused the gift to be incomplete by also retaining the power to designate the person or persons to receive the trust principal at death, and, as a result, no transfer (within the meaning of § 25.2511-1(c)(2)) of the remainder interest was made at the time of the creation of the trust, section 2518 would apply to any disclaimer made after W's death with respect to an interest in the trust property.

(3) Section 25.2518-1(a)(1) is effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

* * * * *

Par. 9. Section 25.2518-2 is amended as follows:

1. Paragraph (c)(3) is redesignated as paragraph (c)(3)(i).

2. Newly designated paragraph (c)(3)(i) is amended as follows:

a. In the first, eighth, and eleventh sentences, the word "taxable" is removed in each place it appears.

b. In the third and ninth sentences, the language "taxable transfer" is removed and "transfer creating an interest" is added in each place it appears.

c. The fourth, fifth, sixth, and seventh sentences are revised.

d. A new sentence is added after the fourth sentence.

3. A new paragraph (c)(3)(ii) is added.

4. Paragraph (c)(4) is revised.

5. In paragraph (c)(5), *Example (7)* is revised.

6. In paragraph (c)(5), *Example (9)* is redesignated as *Example (13)* and newly designated *Example (13)* is revised.

7. In paragraph (c)(5), *Example (8)* is redesignated as *Example (9)* and newly designated *Example (9)* is revised.

8. In paragraph (c)(5), *Example (10)* is redesignated as *Example (12)* and the first sentence of newly designated *Example (12)* is revised.

9. In paragraph (c)(5), new *Examples (8), (10), (11), (14), and (15)*, are added.

The additions and revisions read as follows:

§ 25.2518-2 *Requirements for a qualified disclaimer.*

* * * * *

(c) * * *

(3)(i) * * * With respect to transfers made by a decedent at death or transfers that become irrevocable at death, the transfer creating the interest occurs on the date of the decedent's death, even if an estate tax is not imposed on the

transfer. For example, a bequest of foreign-situs property by a nonresident alien decedent is regarded as a transfer creating an interest in property even if the transfer would not be subject to estate tax. If there is a transfer creating an interest in property during the transferor's lifetime and such interest is later included in the transferor's gross estate for estate tax purposes (or would have been included if such interest were subject to estate tax), the 9-month period for making the qualified disclaimer is determined with reference to the earlier transfer creating the interest. In the case of a general power of appointment, the holder of the power has a 9-month period after the transfer creating the power in which to disclaim. If a person to whom any interest in property passes by reason of the exercise, release, or lapse of a general power desires to make a qualified disclaimer, the disclaimer must be made within a 9-month period after the exercise, release, or lapse regardless of whether the exercise, release, or lapse is subject to estate or gift tax. * * *

(ii) Sentences 1, 3 through 10, and 12 of paragraph (c)(3)(i) of this section are effective for transfers creating the interest to be disclaimed made after the date of publication as final regulations in the Federal Register.

(4) *Joint property* — (i) *Interests that are unilaterally severable.* Except as provided in paragraph (c)(4)(iv) of this section with respect to joint bank accounts and joint brokerage accounts, in the case of an interest in a joint tenancy with right of survivorship or a tenancy by the entirety that either joint tenant can sever unilaterally under local law, a qualified disclaimer of the interest to which the disclaimant succeeds as donee upon creation of the tenancy must be made no later than 9 months after the creation of the tenancy. A qualified disclaimer of the survivorship interest to which the survivor succeeds by operation of law upon the death of the first joint tenant to die must be made no later than 9 months after the death of the first joint tenant to die. See, however, section 2518(b)(2)(B) for a special rule in the case of disclaimers by persons under age 21. Except as provided in paragraph (c)(4)(iii) of this section (with respect to certain tenancies in real property created after 1954 and before 1982 and certain tenancies created on or after July 14, 1988), the interest that may be disclaimed within 9 months after the death of the first joint tenant to die is the

interest to which the disclaimant succeeds by right of survivorship, regardless of the portion of the property attributable to consideration furnished by the disclaimant and regardless of the portion of the property that is included in the decedent's gross estate under section 2040. See § 25.2518-2(c)(5), *Example (7)*.

(ii) *Interests that are not unilaterally severable.* Except as provided in paragraph (c)(4)(iii) of this section with respect to interests created after 1954 and before 1982 and certain interests created after July 14, 1988, if an interest in joint property with right of survivorship or an interest held as a tenant by the entirety is not unilaterally severable under local law, a qualified disclaimer of the interest or any portion of the interest must be made no later than 9 months after the transaction creating the tenancy. A tenant by the entirety or other cotenant who cannot unilaterally sever the interest under applicable local law cannot make a qualified disclaimer of any portion of the joint interest to the extent attributable to consideration furnished by that tenant even if the disclaimer is made within 9 months of the creation of the tenancy. See § 25.2518-2(c)(5), *Example (8)*.

(iii) *Tenancies in real property between spouses created before 1982 and certain tenancies in real property between spouses created on or after July 14, 1988.* In the case of a joint tenancy between spouses or a tenancy by the entirety in real property created after 1954 and before 1982 where no election was made under section 2515, or a joint tenancy between spouses or a tenancy by the entirety in real property created on or after July 14, 1988, to which section 2523(i)(3) applies (relating to the creation of a tenancy where the spouse of the donor is not a United States citizen), the surviving spouse must make a qualified disclaimer no later than 9 months after the death of the first spouse to die. The surviving spouse may disclaim any portion of the joint interest that is includible in the decedent's gross estate under section 2040. See § 25.2518-2(c)(5), *Examples (9) and (10)*.

(iv) *Special rule for joint bank and brokerage accounts established between spouses or between persons other than husband and wife.* In the case of a transfer to a joint bank account or a joint brokerage account, if a transferor may unilaterally withdraw the transferor's own contributions from the ac-

count without the consent of the other cotenant, the transfer creating the survivor's interest in a decedent's share of the account occurs on the death of the deceased cotenant. Accordingly, if a surviving joint tenant desires to make a qualified disclaimer with respect to funds contributed by a deceased cotenant, the disclaimer must be made within 9 months of the cotenant's death. The surviving joint tenant may not disclaim any portion of the joint account attributable to consideration furnished by that surviving joint tenant. See § 25.2518-2(c)(5), *Examples* 13, 14 and 15, regarding the treatment of disclaimed interests under sections 2518, 2033 and 2040.

(v) *Effective date.* This paragraph (c)(4) is effective for disclaimers made after the date of publication as final regulations in the Federal Register.

(5) *Examples.* ***

* * * * *

Example (7). On February 1, 1990, A purchased real property with A's funds. Title to the property was conveyed to "A and B, as joint tenants with right of survivorship." Under applicable state law, the joint interest is unilaterally severable by either tenant. B dies on May 1, 1997, and is survived by A. On January 1, 1998, A disclaims the one-half survivorship interest in the property to which A succeeds as a result of B's death. Assuming that the other requirements of section 2518(b) are satisfied, A has made a qualified disclaimer of the one-half survivorship interest (but not the interest retained by A upon the creation of the tenancy, which may not be disclaimed by A). The result is the same whether or not A and B are married and regardless of the proportion of consideration furnished by A and B in purchasing the property.

Example (8). On March 1, 1997, A purchases a parcel of real property that is conveyed to A and A's spouse, B, as tenants by the entirety. A provides the consideration for the purchase. Under applicable state law, the tenancy cannot be unilaterally severed by either tenant. In order to be a qualified disclaimer, any disclaimer by B of B's interest in the property must be made within 9 months of the creation of the tenancy (i.e., within 9 months of March 1, 1997). Since A provided the entire consideration for the property and the tenancy is not unilaterally severable, A may not disclaim any interest in the tenancy.

Example (9). On March 1, 1977, H and W purchase a tract of vacant land which is conveyed to them as tenants by the entirety. The entire consideration is paid by H. H does not elect, under section 2515, to have the transaction treated as a transfer for purposes of Chapter 12. H dies on June 1, 1997. W can disclaim one-half of the joint interest because this is the interest includible in H's gross estate under section 2040(b). Assuming that W's disclaimer is received by the executor of H's estate no later than 9 months after June 1, 1997, and the other requirements of section 2518(b) are satisfied, W's disclaimer of one-half of the property would be a qualified disclaimer because the transfer which created W's interest is treated as not occurring until H's death, since no election was made under section 2515. The result would be the same if the property was held in

joint tenancy with right of survivorship that was unilaterally severable under local law.

Example (10). Assume the same facts as in example (9) except that the land was purchased on March 1, 1989, and W is not a United States citizen. W has until 9 months after June 1, 1997, to make a qualified disclaimer, and can disclaim the entire joint interest because this is the interest includible in H's gross estate under section 2040(a). The result would be the same if the property was held in joint tenancy with right of survivorship that was unilaterally severable under local law.

Example (11). In 1986, spouses A and B purchased a personal residence taking title as joint tenants with right of survivorship. Under applicable state law, the interest in the tenancy may be unilaterally severed by either party. B dies on July 10, 1997. A wishes to disclaim the one-half undivided interest to which A would succeed by right of survivorship. If A makes the disclaimer, the property interest would pass under B's will to their child C. C, an adult, and A resided in the residence at B's death and will continue to reside there in the future. A continues to own a one-half undivided interest in the property. Assuming that the other requirements of section 2518(b) are satisfied, A may make a qualified disclaimer with respect to the one-half undivided survivorship interest in the residence if A delivers the written disclaimer to the personal representative of B's estate by April 10, 1998, since A is not deemed to have accepted the interest or any of its benefits prior to that time and A's occupancy of the residence after B's death is consistent with A's retained undivided ownership interest.

Example (12). H and W, husband and wife, reside in state X, a community property state. ***

Example (13). On July 1, 1990, A opens a bank account that is held jointly with B, A's spouse, and transfers \$50,000 of A's money to the account. A and B are United States citizens. A can regain the entire account without B's consent. The transfer is not a completed gift under § 25.2511-1(h)(4). A dies on August 15, 1997, and B disclaims the entire amount in the bank account on October 15, 1997. Assuming that the remaining requirements of section 2518(b) are satisfied, B made a qualified disclaimer under section 2518(a) because the disclaimer was made within 9 months after A's death at which time B had succeeded to full dominion and control over the account. Under state law, B is treated as predeceasing A with respect to the disclaimed interest. The disclaimed account balance passes through A's probate estate and is no longer joint property includible in A's gross estate under section 2040. The entire account is, instead, includible in A's gross estate under section 2033. The result would be the same if A and B were not married.

Example (14). The facts are the same as *Example (13)*, except that B, rather than A, dies on August 15, 1997. A may not make a qualified disclaimer with respect to any of the funds in the bank account, because A furnished the funds for the entire account and A did not relinquish dominion and control over the funds.

Example (15). The facts are the same as *Example (13)*, except that B disclaims 40 percent of the funds in the account. Since, under state law, B is treated as predeceasing A with respect to the disclaimed interest, the 40 percent portion of the account balance that was disclaimed passes as part of A's probate estate, and is no longer characterized as joint property. This 40 percent portion of the account balance is, therefore, includible in A's gross estate under section 2033. The remaining 60

percent of the account balance that was not disclaimed retains its character as joint property and, therefore, is includible in A's gross estate as provided in section 2040(b). Therefore, 30 percent ($1/2 \times 60$ percent) of the account balance is includible in A's gross estate under section 2040(b), and a total of 70 percent of the aggregate account balance is includible in A's gross estate. If A and B were not married, then the 40 percent portion of the account subject to the disclaimer would be includible in A's gross estate as provided in section 2033 and the 60 percent portion of the account not subject to the disclaimer would be includible in A's gross estate as provided in section 2040(a), because A furnished all of the funds with respect to the account.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on August 20, 1996, 8:45 a.m., and published in the issue of the Federal Register for August 21, 1996, 61 F.R. 43197)

Telephone Numbers on Statements—Forms W-2G, 1098, 1099, and 8308—Penalty Waiver

Announcement 96-88

The Taxpayer Bill of Rights 2 (P.L. 104-168) requires payers to provide the telephone number of a person to contact on certain statements to recipients, generally Copy B of the forms listed below. This number must provide direct access to an individual who can answer questions about the statement. This new requirement applies to the 1996 forms due to recipients by January 31, 1997. Because the legislation was enacted after the 1996 forms were printed, a failure to include a phone number on the 1996 statements will be considered to have arisen from an event beyond the control of the filer. As a result, the penalty under section 6722 of the Internal Revenue Code will be waived for reasonable cause if the next statement required to be provided (generally for 1997) includes the phone number.

Although the penalty will be waived for 1996, payers are encouraged to enter the telephone number anywhere they choose on the recipient statements. The law requires that the information be entered on Forms W-2G, 1098, 1099-A, 1099-B, 1099-DIV, 1099-G (excluding state or local income tax refunds), 1099-INT, 1099-MISC (excluding fishing boat proceeds), 1099-OID, 1099-PATR and 1099-S. However, payers also are encouraged to furnish the telephone number on other Forms 1099. The 1997 revisions of the forms listed above will require that the telephone number be included in the filer name

and address area. The telephone number is not required on Copy A of paper forms nor on magnetic media filed with the IRS.

The telephone number also must be provided on Form 8308, Report of a Sale or Exchange of Certain Partnership Interests, required to be furnished after 1996. Form 8308 is being revised accordingly.

Employee Plans and Exempt Organizations; Requests for Certain Determination Letters and Applications For Recognition of Exemption

Announcement 96-92

PURPOSE

This is to announce new "Where to File" instructions for applications for employee plans determination letters and other letters and exempt organizations applications for recognition of exemption from federal income tax, previously sent to the Atlanta and Baltimore Key District Offices of Internal Revenue.

BACKGROUND

The Internal Revenue Service is in the process of centralizing the filing of requests for determination and other letters and applications for recognition of tax exemption. Currently, plan sponsors and organizations file with one of seven district offices depending on the geographic location of the plan's or organization's principal office or place of business. Announcement 95-51, published in Internal Revenue Bulletin 1995-25 at page 132, announced that centralization will be phased in by district.

The Service is also consolidating the volume submitter and regional prototype programs that are presently maintained by each individual region. Plans previously approved by a key district office, whose determination letter processing program is being transferred to Cincinnati, will be reviewed using the same criteria and procedures used by the original district office. New guidelines are being developed that will combine the features and procedures currently in use by the districts. Guidelines for the revised volume submitter and regional prototype programs will be explained in a future announcement.

INSTRUCTIONS

Beginning September 1, 1996, letter requests and applications previously sent

to the key district offices in Atlanta, Georgia, and Baltimore, Maryland, should be sent to the Internal Revenue Service Center in Covington, Kentucky, at the address shown below. (For a period of time, requests and applications mistakenly sent to the Atlanta and Baltimore Key District Offices will be forwarded.) The new address applies to requests for determination letters, regional prototype notification letters and volume submitter advisory letters, on the qualified status of employee plans under sections 401, 403(a), and 409, and the exempt status of any related trust under section 501 of the Internal Revenue Code, applications for recognition of tax exemption on Form 1023 and Form 1024, and other letter applications for recognition of qualification or exemption. The affected plan sponsors and organizations are those whose principal office or place of business is located in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, or any U.S. possession or foreign country. These requests or applications should be sent to:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

Until further notice, plans and organizations in all other locations will continue to file their requests or applications in accordance with the instructions in Section 7 of Revenue Procedure 96-8, published in Internal Revenue Bulletin 1996-1 at page 187, and the instructions on Form 8717, User Fee for Employee Plan Determination Letter Request, or Form 8718, User Fee for Exempt Organization Determination Letter Request.

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties; Correction

Announcement 96-93

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (INTL-062-90; INTL-0032-93; INTL-52-86; INTL-52-94 [1996-19 I.R.B. 26]) which was published in the **Federal Register** for Monday, April 22, 1996 (61 FR 17614). The notice of proposed rulemaking relates to the withholding of income tax under sections 1441 and 1442 on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461, and the related collection, refunds, and credits of withheld tax under sections 1461 through 1463 and section 6402. In addition, the notice of proposed rulemaking also relates to the statutory exemption under sections 871(h) and 881(c) for portfolio interest. The notice of proposed rulemaking proposes to remove certain temporary employment tax regulations under the Interest and Dividend Compliance Act of 1983 and to amend existing regulations under sections 6041A and 6050N. The notice of proposed rulemaking also proposes changes to proposed regulations contained in project number INTL-52-86, published on February 29, 1988 (53 FR 5991) under sections 6041, 6042, 6045, and 6049. The document proposes related changes to the regulations under sections 163(f), 165(j), 3401, 3406, 6114, and 6413 and proposes further changes to the proposed regulations under section 6109 contained in project number IL-0024-94 published on June 8, 1995 (60 FR 30211). The document proposes to remove certain regulations under income tax treaties.

FOR FURTHER INFORMATION CONTACT: Philip Garlett, (202) 622-3880 for questions on proposed regulations under sections 1441, 1442, 1461, 1462, 1463, 3401, 6402, and 6413; Gwendolyn Stanley, (202) 622-3860 for questions on payments to partnerships; Carl Cooper, (202) 622-3840 for questions on proposed regulations under section 163(f), 165(j), 871(h) and 881(c) and on withholding agreements; Teresa Burridge Hughes, (202) 622-3880 for questions on proposed regulations under section 6041 through 6049, 6050N; Teresa Burridge Hughes, (202) 622-3880 and Renay France, (202) 622-4910 for questions on proposed regulations under section 3406; Elissa Shendalman, (202) 622-3870 on proposed regulations under sections 6045 and 6049 relating to

the reporting of payments made in a currency other than the U.S. dollar or transactions subject to section 988; Lilo Hester, (202) 874-1490 for questions on proposed regulations under section 6109; David F. Bergquist, (202) 622-3860 for questions on proposed regulations under section 6114 (numbers are not toll-free).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections are under sections 163(f), 165(j), 871, 881, 1441, 1442, 1461, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050N, 6109, 6114, 6402, and 6413 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (INTL-062-90; INTL-0032-93; INTL-52-86; INTL-52-94) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (INTL-062-90; INTL-0032-93; INTL-52-86; INTL-52-94) which is the subject of FR Doc. 96-8936 is corrected as follows:

1. On page 17619, column 1, in the preamble following the paragraph heading “*Section 1.165-12 Denial of Deduction for Losses on Registration-Required Obligations Not in Registered Form*”, the last line in the first paragraph is corrected to read “in Section 35a.9999-4T, A-5 that the person is not a U.S. person.” and the italicized heading preceding the second paragraph is removed.

2. On page 17621, column 1, in the preamble following the paragraph heading “*Section 1.1441-1 Requirement for the Withholding of Tax on Payments to Foreign Persons*”, line 16 from the top of the column, the language “continue to apply trusts. See § 1.1441-” is corrected to read “continue to apply to trusts. See § 1.1441-”.

3. On page 17621, column 3, in the preamble following the paragraph heading “*Section 1.1441-1 Requirement for the Withholding of Tax on Payments to Foreign Persons*”, the second full paragraph, line 3 from the bottom of the paragraph, the language “§ 1.9999-

5(b), A9 and that are proposed” is corrected to read “§ 35a.9999-5(b), A-9 and that are proposed”.

4. On page 17626, column 3, in the preamble following the paragraph heading “*Section 1.1441-4 Certain Exemptions From Withholding*” the first full paragraph, line 11, the language “(which expired on February, 1993). A” is corrected to read “(which expired on February 2, 1993). A”.

5. On page 17628, column 2, in the preamble under the paragraph heading “*Section 1.1441-7 General Provisions Relating to Withholding Agents*”, the italicized second paragraph from the bottom of the column, is corrected to read as follows:

Section 1.1441-7(b)(3) of the existing regulations is proposed to be removed, pending comments on the continuing necessity of providing guidance on tax-free covenant bonds.

6. On page 17630, column 2, in the preamble under the paragraph heading “*Section 1.1461-1 Deposit and Return of Tax Withheld*”, the last two paragraphs under that paragraph heading are merged.

7. On page 17632, column 1, in the preamble following the paragraph heading “*Section 31.3401(a)(6)-1(e) Income Exempt From Income Tax*”, line 18 from the top of the column, the language “withholding certificate should to be” is corrected to read “withholding certificate should be”.

§ 1.871-14 [Corrected]

8. On page 17633, column 2, § 1.871-14(a), line 4 from the top of the column, the language “871(h) or 882(a) if such interest is” is corrected to read “871(b) or 882(a) if such interest is”.

§ 1.1441-1 [Corrected]

9. On page 17635, column 1, § 1.1441-1(b), line 10, the language “of tax and for the withholding agent” is corrected to read “of tax and for which the withholding agent”.

10. On page 17636, column 2, § 1.1441-1(c)(6)(ii)(B), line 17 from the top of the column, the language “payments made to a single foreign entity” is corrected to read “payments made to a single foreign entity”.

11. On page 17637, column 3, § 1.1441-1(e)(3)(ii)(E), line 1, the language “If the information is not assuming” is corrected to read “If the qualified intermediary is not assuming”.

12. On page 17638, column 2, § 1.1441-1(e)(4)(ii)(B), line 10, the language “1(c)(2)(ii) or the taxpayer identifying” is corrected to read “1(c)(2)(i) or the taxpayer identifying”.

13. On page 17641, column 2, § 1.1441-1(f)(3)(i), line 4, the language “is presumed made to a U.S. person if the” is corrected to read “is presumed made to a U.S. person unless the”.

§ 1.1441-3 [Corrected]

14. On page 17645, column 3, § 1.1441-3(e)(2), line 17, the language “dollar amounts withheld from year to” is corrected to read “dollar amounts withheld and from year to”.

§ 1.1441-4 [Corrected]

15. On page 17647, column 2, § 1.1441-4(b)(2)(ii) introductory text, line 6, the language “the penalties of perjury, and contain the” is corrected to read “penalties of perjury, and contain the”.

16. On page 17648, column 2, § 1.1441-4(f)(2), line 3, the language “a date that is 60 days after the date these” is corrected to read “the date that is 60 days after the date these”.

§ 1.1441-6 [Corrected]

17. On page 17649, column 3, § 1.1441-6(b)(1), line 22 from the top of the column, the language “meaning of section 267(b) and 707(b),” is corrected to read “meaning of section 267(b) or 707(b),”.

18. On page 17649, column 3, § 1.1441-6(b)(1), lines 31 and 32 from the top of the column, the language “this chapter. See paragraph (d) of this section for circumstances under which” is corrected to read “this chapter. See § 1.1441-1(e)(4)(v) for circumstances under which”.

§ 1.1461-2 [Corrected]

19. On page 17656, column 3, § 1.1461-2(a)(2)(ii), line 8, the language “must provide a copy or such receipt to” is corrected to read “must provide a copy of such receipt to”.

§ 1.6041-1 [Corrected]

20. On page 17657, column 3, § 1.6041-1(a)(1)(ii), line 14, the language “royalties); or section 6050P(a) or (b)” is corrected to read “royalties); or section 6050P(a) and (b)”.

§ 1.6041-4 [Corrected]

21. On page 17658, column 2, § 1.6041-4(b)(1), line 8, the language

“middleman. The term *middleman*” is corrected to read “middleman and the term *middleman*”.

22. On page 17658, column 3, § 1.6041-4(d), line 10, the language “furnished such certification or” is corrected to read “furnished required certification or”.

§ 1.6045-1 [Corrected]

23. On page 17660, column 3, amendatory instruction 4. under “**Par. 34.**”, is corrected to read as follows:

4. Revising paragraph (g)(1) heading; removing paragraph (g)(1) introductory text; and revising paragraphs (g)(1)(i) and (g)(2) through (g)(4).

24. On page 17661, column 2, § 1.6045-1(g)(4)(ii), last line in the column, the language “holds a valid Form W-8 on a date that” is corrected to read “holds a valid Form W-8 on the date that”.

§ 1.6049-4 [Corrected]

25. On page 17662, column 1, § 1.6049-4(c)(1)(ii)(A)(6), line 2 from the top of the column, the language “established on or before a date that is 60” is corrected to read “established on or before the date that is 60”.

§ 1.6049-5 [Corrected]

26. On page 17664, column 1, § 1.6049-5(g)(2), line 2, the language “holds a valid Form W-8 on a date that” is corrected to read “holds a valid Form W-8 on the date that”.

§ 1.6050N-1 [Corrected]

27. On page 17664, column 3, § 1.6050N-1(e)(2), line 2, the language “holds a valid Form W-8 on a date that” is corrected to read “holds a valid Form W-8 on the date that”.

§ 31.3406(g)-1 [Corrected]

28. On page 17665, column 2, § 31.3406(g)-1(e), line 10, the language “evidence described in § 1.6049-5(2)(ii)” is corrected to read “evidence described in § 1.6049-5(c)(2)(ii)”.

§ 301.6114-1 [Corrected]

29. On page 17666, column 2, amendatory instruction 3. under “**Par. 49.**” is corrected to read as follows:

3. Revising paragraphs (c)(1) and (d)(4)(v).

The revisions read as follows:

§ 301.6114-1 [Corrected]

30. On page 17666, column 3, § 301.6114-1(a)(1)(ii), line 7 from the top of the column, the language “under the penalties of perjury (as well)” is corrected to read “under penalties of perjury (as well)”.

Cynthia E. Grigsby,
Chief, Regulations Unit,
Assistant Chief Counsel (Corporate).

(Filed by the Office of the Federal Register on August 14, 1996, 8:45 a.m., and published in the issue of the Federal Register for August 15, 1996, 61 F.R. 42401)

Foundations Status of Certain Organizations

Announcement 96-94

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Adventists Womens Coalition, Walla Walla, WA
American Counsel Scholarship Foundation Inc., Roseland, NJ
Center for Military History, Los Angeles, CA
Creative Experiences and Children, St. Paul, MN
Delmiro Garcia Scholarship Foundation, San Antonio, TX
Eastern Shore of Virginia Foundation, Franktown, VA
East Hills Rehabilitation & Fitness Institute Inc., Johnstown, PA
Ecomedia, Washington, DC
Educational Research Institute, Philadelphia, PA
El Campo Memorial Hospital Foundation, Inc., El Campo, TX

El Coqui Sports and Prevention League, Lancaster, PA
Environmental Compliance Oversight Corporation, Trevese, PA
EVT High School Alumni Association Inc., Baltimore, MD
Faces of Hope Foundation, Washington, DC
Fairview Village Nursing Center, Lewisberry, PA
Family Information Resource Support Team Place Inc., Annandale, VA
Familyland Foundation, Inc., Ft. Myers, FL
Family Visions Inc., Penn Hills, PA
Fauquier Alliance for Recreation, Warrenton, VA
Fauquier Veterans Memorial Committee Inc., Warrenton, VA
Fellowship of Friends of African Descent, Philadelphia, PA
Finefrock & Stumpfs Charlotte Street Gym, Lancaster, PA
Fire Streak Ministry, Coatesville, PA
First Atlantic Inc., Laurel, MD
Fish, Williamsburg, VA
Foundation for Animal Rights Advocacy Inc., Newark, NJ
Foundation for Plastic Surgery, Annandale, VA
Francisville Community Development Corporation, Philadelphia, PA
Frederick Non-Profit Building Supply Inc., Frederick, MD
Freedoms Choice Inc., Vienna, VA
Friends of Carter Barron Cultural Arts Society, Washington, DC
Friends of Jerusalem Inc., Washington, DC
Friends of John Castaldi Foundation Inc., Philadelphia, PA
Friends of the Palette Place Art Gallery Inc., New Brunswick, NJ
Friends of Saint Andrews Elementary School Trust, Waynesboro, PA
Frontiers Associates Inc., Norfolk, VA
Full Life Incorporated, Annapolis, MD
Garabed Zambak Memorial Fund, Springfield, PA
George Pittas Childrens Foundation Inc., Rockville, MD
George Washington Carver Vocational Technical High Schl Foundation Inc., Baltimore, MD
Giles County Sheriffs Office Canteen, Pearisburg, VA
Glebe Farm Group, Strausburg, VA
Global Awareness Society, Bloomsburg, PA
Go Direct, Inc., Stillwater, OK
Golden Tornado Foundation Inc., Butler, PA
Good News Ministries of America, Philadelphia, PA

Gopal Charities Food for Life
Incorporated, Linthicum, MD
High West Center of Environmental
Policy Studies, Flagstaff, AZ
Information Center for Education,
Dallas, TX
Peanut Batter Players, Boulder, CO
Pros for Kids, Inc., Scottsdale, AZ
Rock County Club, Inc., Beloit, WI
Shared Medical Research Foundation,
Tarzana, CA
Sound of Sight Inc., Broomfield, CO
Tom Moore Community Music
Foundation, Inc., Houston, TX

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of founda-

tion status in the Internal Revenue Bulletin.

The following organization, which has been treated as a private operating foundation described in section 4942(j)(3) of the Code, has now been classified as an organization that is not a private operating foundation. Grantors and contributors may no longer rely upon rulings or determinations that this organization is a private operating foundation. The organization is:

Citizen Policy Research Inc., East
Harwich, MA

Announcement of the Disbarment, Suspension, and Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under Section 330, Title 31 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any person who has violated the rules and regulations governing the recognition of attorneys, certified public accountants, enrolled agents or enrolled actuaries to practice before the Internal Revenue Service.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or

indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or under suspension from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify such disbarred or suspended practitioners, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public

accountant, enrolled agent or enrolled actuary, and the date of disbarment or period of suspension. This announcement will appear in the weekly Bulletin for five successive weeks or as long as it is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended or disbarred and will be consolidated and published in the Cumulative Bulletin.

After due notice and opportunity for hearing before an administrative law judge, the following individuals have been disbarred from further practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Styvaert, Richard	San Diego, CA	CPA	July 5, 1996
Davis Jr., George L.	Washington, D.C.	Enrolled Agent	August 15, 1996

Under 31 Code of Federal Regulations, Part 10, an enrolled agent in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his resignation from such practice. The Director of Practice, in his discretion, may suspend an enrolled agent in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or

indirectly employing, accepting assistance from, being employed by or sharing fees with, any enrolled agent who has resigned from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify former enrolled agents who have resigned from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of former

enrolled agents who have resigned from such practice, and date of resignation. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each enrolled agent who has resigned, and will be consolidated and published in the Cumulative Bulletin.

The following individual has offered his resignation as an enrolled agent:

Name	Address	Date of Resignation
Marchioli, Anthony	Dallas, TX	July 12, 1996

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or

indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public

accountant, enrolled agent or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Berry, James R.	Columbus, MO	CPA	June 5, 1996 to December 4, 1997
Rohner Jr., Richard E.	Burr Ridge, IL	CPA	June 10, 1996 to June 9, 1997
Bova, Robert J.	Tampa, FL	CPA	June 10, 1996 to March 9, 1997
Rines, Robert L.	Concord, NH	Attorney	June 17, 1996 to December 16, 1998
Kimball, Randy	Rancho Cucamonga, CA	CPA	July 1, 1996 to December 31, 1996
Cole, Sherman	Oklahoma City, OK	CPA	July 1, 1996 to March 31, 1997
Barretta, Samuel N.	Southfield, MI	Attorney	August 1, 1996 to December 31, 1999
Harris, Luis F.	Orlando, FL	CPA	August 1, 1996 to October 31, 1996
Vourvoulias, James	Park Ridge, IL	CPA	August 1, 1996 to October 31, 1996
Swan, Roy E.	Salem, OR	CPA	August 1, 1996 to January 31, 1997
Hamilton, Barry K.	Twins Falls, ID	CPA	August 1, 1996 to September 30, 1996
Horton, Greta	Richland, VA	CPA	Indefinite from August 2, 1996
Addabbo, Marie P.	Manchester, CT	Enrolled Agent	September 1, 1996 to May 31, 1997
Crouch Jr., Richard E.	Miss'n Viejo, CA	CPA	September 1, 1996 to February 28, 1999
Sanders Jr., Wilfred A.	Orlando, FL	CPA	September 1, 1996 to August 31, 1998
Perkins, Nancy F.	Apple Valley, MN	CPA	September 1, 1996 to November 30, 1996
Nichols, Oliver R.	Meriden, CT	CPA	September 1, 1996 to May 31, 1997
Winiemko, Ronald C.	Sterl'g Hts, MI	Attorney	September 1, 1996 to February 28, 1999
Pallman, William F.	Guilford, CT	CPA	September 30, 1996 to January 29, 1997
Gannon, Martin C.	Wallingford, CT	CPA	September 30, 1996 to December 29, 1996
Andrews, Craig A.	Hicksville, OH	CPA	September 30, 1996 to September 29, 1997

Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before The Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actu-

aries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public

accountant, enrolled agent or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Bower, Lewis H.	Tampa, FL	CPA	Indefinite from May 30, 1996
Reiss, Irvin L.	Newton, PA	CPA	Indefinite from June 4, 1996
Reynolds, Mark E.	Brownsburg, IN	Attorney	Indefinite from July 1, 1996
Moore, Philip J.	Rome, GA	CPA	Indefinite from July 10, 1996
Broek, Kevin J.	Omaha, NE	CPA	Indefinite from July 10, 1996
Bein, William	Beachwood, OH	Attorney	Indefinite from August 1, 1996
Henry, Gregory	Bradford, PA	Attorney	Indefinite from August 1, 1996
Sadler, George A.	Houston, TX	Attorney	Indefinite from August 1, 1996
Fuhr IV, John Henry	Dallas, TX	CPA	Indefinite from August 1, 1996
Rakov, Harris J.	Mahwah, NJ	Attorney	Indefinite from August 1, 1996
Perkell, Mark E.	S. Burlington, VT	Attorney	Indefinite from August 1, 1996
Darrah, Robert J.	Neola, IA	CPA	Indefinite from August 21, 1996
Constantino, Enrico J.	Bay Shore, NY	Attorney	Indefinite from August 27, 1996
VanLoan, Jonathan A.	Frazer, PA	Attorney	Indefinite from August 27, 1996
Bennett, John J.	Milford, CT	Attorney	Indefinite from August 27, 1996
Lavin-Munch, Carole A.	Merrionette Pk, IL	CPA	Indefinite from August 27, 1996

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling

is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does

more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.

Acq.—Acquiescence.

B—Individual.

BE—Beneficiary.

BK—Bank.

B.T.A.—Board of Tax Appeals.

C.—Individual.

C.B.—Cumulative Bulletin.

CFR—Code of Federal Regulations.

CI—City.

COOP—Cooperative.

Ct.D.—Court Decision.

CY—County.

D—Decedent.

DC—Dummy Corporation.

DE—Donee.

Del. Order—Delegation Order.

DISC—Domestic International Sales Corporation.

DR—Donor.

E—Estate.

EE—Employee.

E.O.—Executive Order.

ER—Employer.

ERISA—Employee Retirement Income Security Act.

EX—Executor.

F—Fiduciary.

FC—Foreign Country.

FICA—Federal Insurance Contribution Act.

FISC—Foreign International Sales Company.

FPH—Foreign Personal Holding Company.

F.R.—Federal Register.

FUTA—Federal Unemployment Tax Act.

FX—Foreign Corporation.

G.C.M.—Chief Counsel's Memorandum.

GE—Grantee.

GP—General Partner.

GR—Grantor.

IC—Insurance Company.

I.R.B.—Internal Revenue Bulletin.

LE—Lessee.

LP—Limited Partner.

LR—Lessor.

M—Minor.

Nonacq.—Nonacquiescence.

O—Organization.

P—Parent Corporation.

PHC—Personal Holding Company.

PO—Possession of the U.S.

PR—Partner.

PRS—Partnership.

PTE—Prohibited Transaction Exemption.

Pub. L.—Public Law.

REIT—Real Estate Investment Trust.

Rev. Proc.—Revenue Procedure.

Rev. Rul.—Revenue Ruling.

S—Subsidiary.

S.P.R.—Statements of Procedural Rules.

Stat.—Statutes at Large.

T—Target Corporation.

T.C.—Tax Court.

T.D.—Treasury Decision.

TFE—Transferee.

TFR—Transferor.

T.I.R.—Technical Information Release.

TP—Taxpayer.

TR—Trust.

TT—Trustee.

U.S.C.—United States Code.

X—Corporation.

Y—Corporation.

Z—Corporation.

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¹A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.

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¹A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.